

# UTAH STATE BULLETIN

OFFICIAL NOTICES OF UTAH STATE GOVERNMENT  
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The *Utah State Bulletin (Bulletin)* is an official noticing publication of the executive branch of Utah State Government. The Department of Administrative Services, Division of Administrative Rules produces the *Bulletin* under authority of Section 63G-3-402.

Inquiries concerning the substance or applicability of an administrative rule that appears in the *Bulletin* should be addressed to the contact person for the rule. Questions about the *Bulletin* or the rulemaking process may be addressed to: Division of Administrative Rules, PO Box 141007, Salt Lake City, Utah 84114-1007, telephone 801-538-3764, FAX 801-537-9240. Additional rulemaking information, and electronic versions of all administrative rule publications are available at: <http://www.rules.utah.gov/>

The information in this *Bulletin* is summarized in the *Utah State Digest (Digest)*. The *Digest* is available by E-mail or over the Internet. Visit <http://www.rules.utah.gov/publicat/digest.htm> for additional information.

Division of Administrative Rules, Salt Lake City 84114

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# EDITOR'S NOTES

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## **Delayed Notice, Publication, and Codification of the Expiration of Rule R694-1**

Rule R694-1, entitled "Archeological Permits," expired effective 10/22/2011. The rule expired because the required five-year review was not filed by the due date (see Subsection 63G-3-305(8)).

The Division of Administrative Rules should have published a Notice of the Expiration in the November 15, 2011, issue of the Utah State Bulletin. Due to a clerical oversight, the Division did not record the expiration until 02/08/2012. Thus, notice is published in this issue.

In addition, the Division should not have included Rule R694-1 in the December 2011, the January 2012, and the February 2012 updates to the Utah Administrative Code. These updates will be corrected and annotated with a note explaining the correction.

*Questions regarding the expiration of Rule R694-1 should be addressed to Nancy Lancaster at 801-538-3218 or by email at [nllancaster@utah.gov](mailto:nllancaster@utah.gov). The Division of Administrative Rules regrets any inconvenience caused by this error.*

**End of the Editor's Notes Section**



## NOTICES OF PROPOSED RULES

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A state agency may file a **PROPOSED RULE** when it determines the need for a new rule, a substantive change to an existing rule, or a repeal of an existing rule. Filings received between February 02, 2012, 12:00 a.m., and February 15, 2012, 11:59 p.m. are included in this, the March 01, 2012 issue of the *Utah State Bulletin*.

In this publication, each **PROPOSED RULE** is preceded by a **RULE ANALYSIS**. This analysis provides summary information about the **PROPOSED RULE** including the name of a contact person, anticipated cost impact of the rule, and legal cross-references.

Following the **RULE ANALYSIS**, the text of the **PROPOSED RULE** is usually printed. New rules or additions made to existing rules are underlined (e.g., example). Deletions made to existing rules are struck out with brackets surrounding them (e.g., [~~example~~]). Rules being repealed are completely struck out. A row of dots in the text between paragraphs (. . . . .) indicates that unaffected text from within a section was removed to conserve space. Unaffected sections are not printed. If a **PROPOSED RULE** is too long to print, the Division of Administrative Rules will include only the **RULE ANALYSIS**. A copy of each rule that is too long to print is available from the filing agency or from the Division of Administrative Rules.

The law requires that an agency accept public comment on **PROPOSED RULES** published in this issue of the *Utah State Bulletin* until at least April 2, 2012. The agency may accept comment beyond this date and will indicate the last day the agency will accept comment in the **RULE ANALYSIS**. The agency may also hold public hearings. Additionally, citizens or organizations may request the agency hold a hearing on a specific **PROPOSED RULE**. Section 63G-3-302 requires that a hearing request be received by the agency proposing the rule "in writing not more than 15 days after the publication date of the proposed rule."

From the end of the public comment period through June 29, 2012, the agency may notify the Division of Administrative Rules that it wants to make the **PROPOSED RULE** effective. The agency sets the effective date. The date may be no fewer than seven calendar days after the close of the public comment period nor more than 120 days after the publication date of this issue of the *Utah State Bulletin*. Alternatively, the agency may file a **CHANGE IN PROPOSED RULE** in response to comments received. If the Division of Administrative Rules does not receive a **NOTICE OF EFFECTIVE DATE OF a CHANGE IN PROPOSED RULE**, the **PROPOSED RULE** lapses and the agency must start the process over.

The public, interest groups, and governmental agencies are invited to review and comment on **PROPOSED RULES**. *Comment may be directed to the contact person identified on the Rule Analysis for each rule.*

**PROPOSED RULES** are governed by Section 63G-3-301; Rule R15-2; and Sections R15-4-3, R15-4-4, R15-4-5, R15-4-9, and R15-4-10.

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**The Proposed Rules Begin on the Following Page**

**Administrative Services, Risk  
Management  
R37-4  
Adjusted Utah Governmental Immunity  
Act Limitations on Judgments**

**NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE NO.: 35844

FILED: 02/03/2012

**RULE ANALYSIS**

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This amendment is required by Subsection 63G-7-604(4).

SUMMARY OF THE RULE OR CHANGE: This amendment increases the limit for personal injury damages against a governmental entity from \$648,700 to \$674,000 per person/per occurrence, and from \$2,221,700 to \$2,308,400 in the aggregate. The limit for property damages against a governmental entity is also increased from \$259,500 to \$269,700 in any one occurrence. These amendments will be effective 07/01/2012.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 63G-7-604(4)

ANTICIPATED COST OR SAVINGS TO:

◆ THE STATE BUDGET: In general, there is the potential for a 3.9% increase in personal injury and property damage awards during the next two fiscal years; however, it is impossible to calculate or estimate the aggregate anticipated costs that may arise due to this amendment, because those costs will be based upon the unique facts and applicable laws associated with claims that will arise in FY 2013 and 2014.

◆ LOCAL GOVERNMENTS: Because this amendment affects local government entities, it will have the same impact on them, namely the potential for a 3.9% increase in personal injury and property damage awards during the next two fiscal years. As indicated above, it is impossible to calculate or estimate the aggregate costs that may arise due to this amendment, because those costs will be based upon the unique facts and applicable laws associated with claims that will arise in FY 2013 and 2014.

◆ SMALL BUSINESSES: Because this amendment increases the limitation on judgments, it may favor small businesses that have legitimate claims against the State of Utah and its political subdivisions.

◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: Because this amendment increases the limitations on judgments, it may favor persons who have legitimate claims against the State of Utah and its political subdivisions.

COMPLIANCE COSTS FOR AFFECTED PERSONS: This amendment does not impose any compliance costs.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Businesses that have legitimate causes of action against the state and its political subdivisions may have the benefit of increased limits on damages as a result of this amendment.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

ADMINISTRATIVE SERVICES  
RISK MANAGEMENT  
ROOM 5120 STATE OFFICE BLDG  
450 N STATE ST  
SALT LAKE CITY, UT 84114-1201  
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Stephen Hewlett by phone at 801-538-9572, by FAX at 801-538-9597, or by Internet E-mail at shewlett@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 04/02/2012

THIS RULE MAY BECOME EFFECTIVE ON: 04/09/2012

AUTHORIZED BY: Tani Downing, Director

**R37. Administrative Services, Risk Management.**

**R37-4. Adjusted Utah Governmental Immunity Act Limitations on Judgments.**

**R37-4-1. Authority and Calculation Process.**

Pursuant to UCA 63G-7-604(4) [~~formerly 63-30d-604(4) (b)~~] the Risk Manager hereby establishes a new limitation of judgment.

Accordingly, the Risk Manager has calculated the consumer price index (CPI) for calendar years ~~[2007 and]~~ 2009 and 2011 using the standards provided in Sections 1(f)(4) and 1 (f)(5) of the Internal Revenue Code. Section 1(f)(4) has defined the CPI for any calendar year to mean the average of the consumer price index as of the close of the 12-month period ending on August 31 of such calendar year. Section 1(f)(5) has defined "consumer price index" to mean the index used for all-urban consumers published by the Department of Labor. By applying these standards, the consumer price index for the calendar year ~~[2007]~~2009 is calculated to be ~~[204.87]~~214.00 and the index for ~~[2009]~~2011 is ~~[214.00]~~222.43. The percentage difference between the ~~[2007 index and the]~~2009 index and the 2011 index was then computed to be ~~[4.5%]~~3.9%.

**R37-4-2. New Limitation of Judgment Amounts.**

As a result of the above required calculations, the new limitation of judgment amounts currently required by UCA 63G-7-604(1) has been increased as follows, and is effective July 1, ~~[2010]~~2012 for claims occurring on or after that date:

1) The limit for damages for personal injury against a governmental entity, or an employee who a governmental entity has a duty to indemnify, is [~~\$648,700~~]\$674,000 for one person in any one occurrence, and [~~\$2,221,700~~]\$2,308,400 aggregate amount of individual awards that be may awarded in relation to a single occurrence; and

2) The limit for property damages (excluding damages awarded as compensation when a governmental entity has taken or damaged private property for public use without just compensation) against a governmental entity, or an employee whom a governmental entity has a duty to indemnify is [~~\$259,500~~]\$269,700 in any one occurrence.

**R37-4-3. Limitations of Judgments by Calendar Date.**

The limitation on judgments are established by the date of the occurrence. The dates and dollar amounts are as follows:

1) Incident(s) occurring before July 1, 2001 - \$250,000 for one person in an occurrence, \$500,000 aggregate for two or more persons in an occurrence; and \$100,000 for property damage for any one occurrence as explained in R37-4-2(2).

2) Incident(s) occurring on or after July 1, 2001 - \$500,000 for one person in an occurrence, \$1,000,000 aggregate for two or more persons in an occurrence; and \$200,000 for property damage for any one occurrence as explained in R37-4-2(2).

3) Incident(s) occurring on or after July 1, 2002 - \$532,500 for one person in an occurrence, \$1,065,000 aggregate for two or more persons in an occurrence; and \$213,000 for property damage for any one occurrence as explained in R37-4-2(2).

4) Incident(s) occurring on or after July 1, 2004 - \$553,500 for one person in an occurrence, \$1,107,000 aggregate for two or more persons in an occurrence, and \$221,400 for property damage for any one occurrence as explained in R37-4-2(2).

5) Incident(s) occurring on or after July 1, 2006 - \$583,900 for one person in an occurrence, \$1,167,900 aggregate for two or more persons in an occurrence, and \$233,600 for property damage for any one occurrence as explained in R37-4-2(2).

6) Incident(s) occurring on or after July 1, 2007 - \$583,900 for one person in an occurrence, \$2,000,000 aggregate for two or more persons in an occurrence, and \$233,600 for property damage for any one occurrence as explained in R37-4-2(2).

7) Incident(s) occurring on or after July 1, 2008 - \$620,700 for one person in an occurrence, \$2,126,000 aggregate for two or more persons in an occurrence, and \$248,300 for property damage for any one occurrence as explained in R37-4-2(2).

8) Incident(s) occurring on or after July 1, 2010 - \$648,700 for one person in an occurrence, \$2,221,700 aggregate for two or more persons in an occurrence, and \$259,500 for property damage for any one occurrence as explained in R37-4-2(2).

9) Incident(s) occurring on or after July 1, 2012 - \$674,000 for one person in an occurrence, \$2,308,400 aggregate for two or more persons in an occurrence, and \$269,700 for property damage for any one occurrence as explained in R37-4-2(2).

**KEY: limitation on judgments, risk management, governmental immunity act caps**

**Date of Enactment or Last Substantive Amendment: [~~June 1, 2010~~]2012**

**Notice of Continuation: October 9, 2007**

**Authorizing, and Implemented or Interpreted Law: 63G-7-604(4)**

## Agriculture and Food, Animal Industry R58-11 Slaughter of Livestock

### NOTICE OF PROPOSED RULE (Amendment)

DAR FILE NO.: 35866

FILED: 02/09/2012

#### RULE ANALYSIS

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** The purpose of this amendment is to add to the rule the slaughter and processing of poultry.

**SUMMARY OF THE RULE OR CHANGE:** The Department has received requests from individuals requesting licensing for the slaughter and processing of poultry. Currently, federal law allows the slaughtering of a limited number of poultry under an exemption to the Federal Meat Inspection Laws. The changes to Rule R58-11 would bring similar exemptions to Utah Administrative Rule and allow the slaughter and processing of small numbers of poultry.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 4-32-7

**ANTICIPATED COST OR SAVINGS TO:**

◆ **THE STATE BUDGET:** The changes to the rule will not affect the state budget. The program is currently being funded by general fund money. We do not anticipate that the changes to the rule will change the current funding level beyond inflationary costs associated with the general fund.

◆ **LOCAL GOVERNMENTS:** There are no costs to local government at this time under the current rule. Local government is not involved in licensing for the slaughter of poultry and therefore would not have any costs.

◆ **SMALL BUSINESSES:** There is no cost to small businesses associated with the change. This rule will allow the creation of small poultry slaughtering and processing businesses.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There are no costs associated since the state is the one that will issue licenses.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** Individuals and businesses will be expected to pay an annual licensing fee and comply with local ordinances before the start up their business of slaughtering and processing of

poultry. After start up, these businesses will need to comply with all sanitation and labeling requirements to protect the consumer of their product.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The change in the rule will have no fiscal impact on existing businesses. The rule will allow the creation of small business to slaughter and process poultry.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

AGRICULTURE AND FOOD  
ANIMAL INDUSTRY  
350 N REDWOOD RD  
SALT LAKE CITY, UT 84116-3034  
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Bruce King by phone at 801-538-7162, by FAX at 801-538-7169, or by Internet E-mail at bking@utah.gov  
◆ Kathleen Mathews by phone at 801-538-7103, by FAX at 801-538-7126, or by Internet E-mail at kmathews@utah.gov  
◆ Kyle Stephens by phone at 801-538-7102, by FAX at 801-538-7126, or by Internet E-mail at kylestephens@utah.gov  
◆ Wyatt Frampton by phone at 801-538-7165, by FAX at 801-538-7169, or by Internet E-mail at wframpton@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 04/15/2012

THIS RULE MAY BECOME EFFECTIVE ON: 05/01/2012

AUTHORIZED BY: Leonard Blackham, Commissioner

**R58. Agriculture and Food, Animal Industry.**

**R58-11. Slaughter of Livestock and Poultry.**

**R58-11-1. Authority.**

Promulgated under authority of Section 4-32-8.

**R58-11-2. Definitions.**

- A. "Adulterated" - As defined in Section 4-32-3(1).
- B. "Bill of Sale for Hides" - A hide release or some other formal means of transferring the title of hides.
- C. "Business" - An individual or organization receiving remuneration for services.
- D. "Commissioner" - Commissioner of Agriculture and Food or his representative.
- E. "Custom Slaughter-Release Permit" - A permit that will serve as a brand inspection certificate and will allow animal owners to have their animals farm custom slaughtered.
- F. "Department" - Utah Department of Agriculture and Food.
- G. "Detain or Embargo" - Holding of a food or food product for legal verification of adulteration, misbranding or proof of ownership.

H. "Emergency Slaughter" - Emergency Slaughter is no longer allowed for non-ambulatory injured cattle. Non-ambulatory disabled cattle that cannot rise from a recumbent position or cannot walk, including, but not limited to, those with broken appendages, severed tendons or ligaments, nerve paralysis, fractured vertebral column or metabolic conditions, are not allowed to be slaughtered for food.

I. "Farm Custom Slaughtering" - The slaughtering, skinning and preparing of livestock and poultry by humane means for the purpose of human consumption which is done at a place other than a licensed slaughtering house by a person who is not the owner of the animal.

J. "Food" - Product intended for human consumption.

K. "Immediate Family" - Those living together in a single dwelling unit and/or their sons and daughters.

L. "License" - A license issued by the Utah Department of Agriculture and Food to allow farm custom slaughtering.

M. "Licensee" - A person who possesses a valid farm custom slaughtering license.

N. "Misbranded" - As defined in Section 4-32-3(27).

O. "Owner" - A person holding legal title to the animal.

**R58-11-3. Registration and License Issuance.**

A. Farm Custom Slaughtering License.

1. Any person or person desiring to do farm custom slaughtering shall apply to the Department. Such application for a license will be made on a department form for a Farm Custom Slaughter License. The form shall show the name, address and telephone number of the owner, the name, address and telephone number of the operator if it is different than the owner, a brief description of the vehicle and the license number. Licenses will be valid for the calendar year (January 1 to December 31). Each licensee will be required to re-apply for a license every calendar year. Change of ownership or change of vehicle license will require a new application to be filed with the Department.

2. Registration will not be recognized as complete until the applicant has demonstrated his ability to slaughter and has completed and signed the registration form.

3. A fee [~~of \$75~~] must be paid prior to license issuance.

**R58-11-4. Equipment and Sanitation Requirements.**

A. Unit of vehicle and equipment used for farm custom slaughtering:

1. The unit or vehicle used for farm custom slaughtering shall be so constructed as to permit maintenance in a clean, sanitary manner.

2. A tripod or rail capable of lifting a carcass to a height which enables the carcass to clear the ground for bleeding and evisceration must be incorporated into the unit or vehicle. Hooks, gambles, or racks used to hoist and eviscerate animals shall be of easily cleanable metal construction.

3. Knives, scabbards, saws, etc. shall be of rust resistant metal or other impervious easily cleanable material.

a. A clean dust proof container shall be used to transport and store all instruments and utensils used in slaughtering animals.

4. A water tank shall be an integral part of the unit or vehicle. It shall be of approved construction with a minimum capacity of 40 gallons. Water systems must be maintained in a sanitary manner and only potable water shall be used.

5. A tank (for sanitizing) large enough to allow complete emersion of tools used for slaughtering must be filled during slaughter operations with potable water and maintained at a temperature of at least 180 degrees Fahrenheit. In lieu of 180 degrees Fahrenheit water, chemical sterilization may be used with an approved chemical agent after equipment has been thoroughly cleaned. Chloramine, hypochloride, and quaternary ammonium compounds or other approved chemical compounds may be used for this purpose and a concentration must be maintained at sufficient levels to disinfect utensils. Hot water, cleaning agents, and disinfectant shall be available at all times if chemicals are used in lieu of 180 degrees Fahrenheit water.

6. Cleaning agents and paper towels shall be available so hands and equipment may be cleaned as needed.

7. Aprons, frocks and other outer clothing worn by persons who handle meat must be clean and of material that is easily cleanable.

8. All inedible products and offal will be denatured with either an approved denaturing agent or by use of pounce material as a natural denaturing agent.

9. When a licensee transports uninspected meat to an establishment for processing, he shall:

a. do so in a manner whereby product will not be adulterated or misbranded, and/or mislabeled; and

b. transport the meat in such a way that it is properly protected; and

c. deliver carcasses in such a way that they shall be placed under refrigeration within one hour of time of slaughter (40 degrees F).

10. Sanitation.

1. Unit or Vehicle.

a. The unit or vehicle must be thoroughly cleaned after each daily use.

b. All food-contact and non-food contact surfaces of utensils and equipment must be cleaned and sanitized as necessary to prevent the creation of insanitary conditions and the adulteration of carcasses and parts.

c. Carcasses must be protected from adulteration during processing, handling, storage, loading, unloading and during transportation to processing establishments.

2. Equipment.

a. All knives, scabbards, saws and all other food contact surfaces shall be cleaned and sanitized prior to slaughter and as needed to prevent adulteration.

b. Equipment must be cleaned and sanitized after each slaughter and immediately before each slaughter.

3. Inedibles.

a. Inedibles shall be placed in designated containers and be properly denatured, and the inedible containers must be clearly marked (Inedible Not For Human Consumption in letters not less than 4 inches in height).

b. Containers for inedibles shall be kept clean and properly separated from edible carcasses to prevent adulteration.

4. Personal Cleanliness.

a. Adequate care shall be taken to prevent contamination of the carcasses from fecal material, ingesta, milk, perspiration, hair, cosmetics, medications and similar substances.

b. Outer clothing worn by permittee shall, while handling exposed carcasses, be clean.

c. No licensee with a communicable disease or who is a disease carrier or is infected with boils, infected wounds, sores or an acute respiratory infection shall participate in livestock slaughtering.

d. Hand wash facilities shall be used as needed to maintain good personal hygiene.

#### **R58-11-5. Slaughtering Procedures of Livestock.**

A. Slaughter Area

1. Slaughtering shall not take place under adverse conditions (such as blowing dirt, dust or in mud).

2. If a slaughter area is used for repeated kills, the area should be maintained to prevent blood from collecting, running off on to adjacent property, or contaminating water sources.

3. Hides, viscera, blood, pounce material, and all tissues must be removed and disposed at a rendering facility, landfill, composting or by burial as allowed by law.

B. Humane Slaughter - Animals shall be rendered insensible to pain by a single blow, or gun shot or electrical shock or other means that is instantaneous and effective before being shackled, hoisted, thrown, cast or cut.

C. Hoisting and Bleeding - Animals shall be hoisted and bled as soon after stunning as possible to utilize post-stunning heart action and to obtain complete bleeding. Carcasses shall be moved away from the bleeding area for skinning and butchering.

D. Skinning - Carcass and head skin must be handled without neck tissue contamination. This may be done by leaving the ears on the hide and tying the head skin. Feet must be removed before carcass is otherwise cut. Except for skinning and starting skinning procedures, skin should be cut from inside outward to prevent carcass contamination with cut hair. Hair side of hide should be carefully rolled or reflected away from carcass during skinning. When carcass is moved from skinning bed, caution should be taken to prevent exposed parts from coming in contact with adulterating surfaces.

E. Evisceration - Before evisceration, rectum shall be tied to include bladder neck and to prevent urine and fecal leakage. Care should also be taken while opening abdominal cavities to prevent carcass and/or viscera contamination.

F. Carcass washing - Hair, dirt and other accidental contamination should be trimmed prior to washing. Washing should proceed from the carcass top downward to move away any possible contaminants from clean areas.

#### **R58-11-6. Identification and Records.**

A. Livestock Identification - Pursuant to requirements of Section 4-24-13, it shall be unlawful for any license holder to slaughter livestock which do not have a Brand Inspection Certificate or Farm Custom Slaughter Tag filled out at time of slaughter.

1. Animal owners must have a Brand Inspection Certificate for livestock intended to be farm custom slaughtered, issued by a Department Brand Inspector prior to slaughter, paying the legal brand inspection fee and beef promotion fee. This will be accomplished by the animal owner contacting a Department Brand Inspector and obtaining a Brand Inspection Certificate (Custom Slaughter-Release Permit).

2. Animal owners must also obtain farm custom slaughter identification tags from a Department Brand Inspector for a fee of \$1 each. These tags will be required on beef, pork, and sheep.

**B. Records.**

1. The Custom Slaughter-Release Permit or Farm Custom Slaughter Tag will record the following information:

a. An affidavit with a statement that shall read "I hereby certify ownership of this animal to be slaughtered by (name). I fully understand that having my animal farm custom slaughtered means my animal will not receive meat inspection and is for my use, the use of my immediate family, non-paying guests, or full-time employees. The carcass will be stamped "NOT FOR SALE" and will not be sold." This statement must be signed by the owner or designee.

b. In addition to this affidavit, the following information will be recorded:

- (1) date;
- (2) owner's name, address and telephone number;
- (3) animal description including brands and marks;
- (4) Farm Custom Slaughter tag number.

2. The Farm Custom Slaughter tag must record the following information:

- a. date;
- b. owner's name, address and telephone number;
- c. location of slaughter;
- d. name of licensee;
- e. licensee permit number; and
- f. carcass destination.

3. Prior to slaughtering the licensee shall:

a. Prepare the Farm Custom Slaughter tag with complete and accurate information;

(1) One tag shall stay in the license holder's file for at least one year.

(2) One tag plus a copy of the Farm Custom Slaughter-Release Permit shall be sent into the Department by the 10th of each month for the preceding month's slaughter by the licensee.

(3) After slaughter, all carcasses must be stamped "NOT FOR SALE" on each quarter with letters at least 3/8" in height; further, a Farm Custom Slaughter "NOT FOR SALE" tag must be affixed to each quarter of beef and each half of pork and sheep.

(4) Hide Purchase - Licensee receiving hides for slaughtering services must obtain a copy of the Custom Slaughter-Release Permit to record transfer of ownership as required by Section 4-24-18.

**R58-11-7. Poultry Slaughter.**

**A. Personal Use Exemption.**

1. A person who raises poultry may slaughter and or process the poultry if:

a. slaughtering or processing poultry is not prohibited by local ordinance;

b. the poultry product derived from the slaughtered poultry is consumed exclusively by the person or the person's immediate family, regular employees of the person, or nonpaying guests;

c. the slaughtering and processing of the poultry is performed only by the owner or an employee;

d. the poultry is healthy when slaughtered;

e. the exempt poultry is not sold or donated for use as human food; and

f. the immediate containers bear the statement, "NOT FOR SALE".

**B. Farm Custom Slaughter/Processing**

1. A person may slaughter and or process poultry belonging to another person if:

a. the person holds a valid farm custom slaughter license issued by the department;

b. slaughtering or processing poultry is not prohibited by local ordinance;

c. the licensee does not engage in the business of buying or selling poultry products capable for use as human food;

d. the poultry is healthy when slaughtered;

e. the slaughtering and or processing is conducted in accordance with sanitary standards, practices, and procedures that produce poultry products that are sound, clean, and fit for human food;

f. the unit or vehicle used for farm custom slaughtering shall be so constructed as to permit maintenance in a clean and sanitary manner;

(1) the immediate containers bear the following information:

(2) the owner's name and address;

(3) the licensee's name and address, and;

(4) the statement, "NOT FOR SALE".

**C. Producer/Grower 1,000 Bird Limit Exemption**

1. A poultry grower may slaughter no more that 1,000 birds of his or her own raising in a calendar year for distribution as human food if:

a. the person holds a valid poultry exemption license issued by the department;

b. slaughtering or processing poultry is not prohibited by local ordinance;

c. the poultry grower does not engage in buying or selling poultry products other than those produced from poultry raised on his or her own farm (includes rented or leased property);

d. the slaughtering and or processing is conducted in a approved establishment and in accordance with sanitation performance standards, and procedures that produce poultry products that are sound, clean, and fit for human food;

e. the producer keeps slaughter records and records covering the sales of poultry products to customers for the current calendar year, and;

f. the immediate containers bear the following information:

(1) name of product;

(2) ingredients statement (if applicable);

(3) net weights statement;

(4) name and address of processor;

(5) Safe food handling statement;

(6) date of package and/or Lot number, and;

(7) the statement "Exempt R58-11-7(C)".

**D. Producer/Grower 20,000 Bird Limit Exemption**

1. A poultry grower may slaughter no more that 20,000 birds of his or her own raising in a calendar year for distribution as human food if:

a. the person holds a valid poultry exemption license issued by the department;

b. slaughtering or processing poultry is not prohibited by local ordinance;

c. the poultry grower does not engage in buying or selling poultry products other than those produced from poultry raised on his or her own farm (includes rented or leased property);

d. the slaughtering and or processing is conducted in a fixed establishment and in accordance with sanitary standards, practices, and procedures that produce poultry products that are sound, clean, and fit for human food;

e. the producer keeps slaughter records and records covering the sales of poultry products to customers for the current calendar year, and;

f. the immediate containers bear the following information:

(1) name of product;

(2) ingredients statement (if applicable);

(3) net weights statement;

(4) name and address of processor;

(5) Safe food handling statement;

(6) date of package and/or Lot number, and;

(7) the statement "Exempt R58-11-7(D)".

E. Producer/Grower or Other Person Exemption

1. The term "Producer/Grower or Other Person" in this section means a single entity, which may be:

a. A poultry grower who slaughters and processes poultry that he or she raised for sale directly to household consumers, restaurants, hotels, and boarding houses to be used in those homes and dining rooms for the preparation of meals served or sold directly to customers.

b. A person who purchases live poultry from a grower and then slaughters these poultry and processes such poultry for sale directly to household consumers, restaurants, hotels, and boarding houses to be served in those homes or dining rooms for the preparation of meals sold directly to customers.

2. A business may slaughter and process poultry under this exemption if:

a. the person holds a valid poultry exemption license issued by the department;

b. slaughtering or processing poultry is not prohibited by local ordinance;

c. the producer/grower or other person slaughters for processing and sale directly to household consumers, restaurants, hotels, and boarding houses for use in dining rooms or in the preparation of meals sold directly to customers;

d. the producer/grower or other person slaughters no more than 20,000 birds in a calendar year that the producer/grower or other person raised or purchased;

e. the producer/grower or other person does not engage in the business of buying or selling poultry or poultry products prepared under an other exemptions in the same calendar year he or she claims the Producer/Grower or Other Person Exemption;

f. the processing is limited to preparation of poultry products from poultry slaughtered by the Producer/Grower or Other Person for distribution directly to: 1) household consumers, 2) restaurants, 3) hotels, and 4) boarding houses for use in their dining rooms or in the preparation of meals sold directly to consumers within the jurisdiction were it is prepared;

g. the slaughtering and or processing is conducted in a fixed establishment and in accordance with sanitary standards,

practices, and procedures that produce poultry products that are sound, clean, and fit for human food;

h. the producer keeps slaughter records and records covering the sales of poultry products to customers for the current calendar year, and;

i. the immediate containers bear the following information:

(1) name of product;

(2) ingredients statement (if applicable);

(3) net weights statement;

(4) name and address of processor;

(5) safe food handling statement;

(6) date of package and/or Lot number, and;

(7) the statement "Exempt R58-11-7(E)".

3. A business preparing poultry product under the Producer/Grower or Other Person Exemption may not slaughter or process poultry owned by another person.

4. A business preparing poultry products under the Producer/Grower or Other Person Exemption may not sell poultry products to a retail store or other producer/grower.

F. Small Enterprise Exemption

1. A business that qualifies for the Small Enterprise Exemption may be:

a. A producer/grower who raises, slaughters, and dresses poultry for use as human food whose processing of dressed exempt poultry is limited to cutting up;

(1) A business that purchases live poultry that it slaughters and whose processing of the slaughtered poultry is limited to the cutting up; or

(2) A business that purchases dressed poultry, which it distributes as carcasses and whose processing is limited to the cutting up of inspected or exempted poultry products, for distribution for use as human food.

b. A business may slaughter, dress, and cut up poultry for distribution as human food if:

(1) the person holds a valid poultry exemption license issued by the department;

(2) slaughtering or processing poultry is not prohibited by local ordinance;

(3) the processing of federal or state inspected or exempt poultry product is limited to the cutting up of carcasses or the business slaughters and dresses or cuts up no more than 20,000 birds in a calendar year;

(4) the slaughtering and or processing is conducted in a fixed establishment and in accordance with sanitary standards, practices, and procedures that produce poultry products that are sound, clean, and fit for human food;

(5) the facility used to slaughter or process poultry is not used to slaughter or process another person's poultry;

(6) the immediate containers bear the following information:

(i) name of product;

(ii) ingredients statement (if applicable);

(iii) net weights statement;

(iv) name and address of processor;

(v) safe food handling statement;

(vi) date of package and/or Lot number, and;

(vii) the statement "Exempt R58-11-7(F)".

c. A business may not cut up and distribute poultry products produced under the Small Enterprise Exemption to a business operating under the following exemptions:

- (1) Producer/Grower or PGOP Exemption.
- (2) Retail Dealer, or
- (3) Retail Store.

**R58-11-8[7]. Enforcement Procedures.**

A. Livestock and Poultry Slaughtering License~~[Permit]~~:

1. It shall be unlawful for any person to slaughter or assist in slaughtering livestock and poultry as a business outside of a licensed slaughterhouse unless he holds a valid Farm Custom Slaughtering License issued to him by the Department.

2. Only persons who comply with the Utah Meat and Poultry Products Inspection and Licensing Act and Rules pursuant thereto, and the Utah Livestock Brand and Anti-Theft Act shall be entitled to receive and retain a license.

3. License may be renewed annually and shall expire on the 31st of December of each year.

B. Suspension of license - license may be suspended whenever:

1. The Department has reason to believe that an eminent public health hazard exists;

2. Insanitary conditions are such that carcasses would be rendered adulterated and or contaminated.

3. The license holder has interfered with the Department in the performance of its duties;

4. The licensee violates the Utah Meat and Poultry Products Inspection and Licensing Act or the Utah Livestock Brand and Anti-Theft Act or rules pursuant to these acts.

C. Warning letter - In instances where a violation may have occurred a warning letter may be sent to the licensee which specifies the violations and affords the holder a reasonable opportunity to correct them.

D. Hearings - Whenever a licensee has been given notice by the Department that suspected violations may have occurred or when a license is suspended he may have an opportunity for a hearing to state his views before the Department.

E. Reinstatement of Suspended Permit - Any person whose license has been suspended may make application for the purpose of reinstatement of the license. The Department may then re-evaluate the applicant and conditions; if the applicant has demonstrated to the Department that he will comply with the rules, the license may be reinstated.

F. Detainment or Embargo - Any meat found in a food establishment which does not have the proper identification or any uninspected meat slaughtered by a licensee which does not meet the requirements of these rules may be detained or embargoed.

G. Condemnation - Meat which is determined to be unfit for human consumption may be denatured or destroyed.

**KEY: food inspections, slaughter, livestock, poultry**

**Date of Enactment or Last Substantive Amendment: [~~June 21,~~ 2011]2012**

**Notice of Continuation: August 25, 2010**

**Authorizing, and Implemented or Interpreted Law: 4-32-8**

Commerce, Occupational and  
Professional Licensing  
**R156-73-502**  
Chiropractic Assistant

**NOTICE OF PROPOSED RULE**  
(Amendment)

DAR FILE NO.: 35852  
FILED: 02/06/2012

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** The Division and Chiropractic Physician Licensing Board reviewed the rule and determined that amendments should be proposed to clarify responsibilities by prohibiting activities by an unlicensed chiropractic assistant. The proposed amendments address current practices which may be hazardous to the public safety or welfare.

**SUMMARY OF THE RULE OR CHANGE:** Proposed amendments in Subsection R156-73-502(2) indicate that a supervising chiropractic physician shall never delegate the following to a chiropractic assistant: diagnosis or interpretation of examination results; administration of acupuncture services, and administration of laser.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 58-73-101 and Subsection 58-1-106(1)(a) and Subsection 58-1-202(1)(a)

**ANTICIPATED COST OR SAVINGS TO:**

◆ **THE STATE BUDGET:** The Division will incur minimal costs of approximately \$50 to print and distribute the rule once the proposed amendments are made effective. Any costs incurred will be absorbed in the Division's current budget.

◆ **LOCAL GOVERNMENTS:** The proposed amendments only apply to licensed chiropractic physicians and any unlicensed chiropractic assistants employed in a chiropractic physician office. As a result, the proposed amendments do not apply to local governments.

◆ **SMALL BUSINESSES:** The proposed amendments only apply to licensed chiropractic physicians and any unlicensed chiropractic assistants employed in a chiropractic physician office. A licensed chiropractic physician's office may qualify as a small business. If the proposed prohibited activities are currently being performed by unlicensed chiropractic assistants in a licensed chiropractic physician's office, there may be some unknown costs; however, the Division is not able to determine an exact cost due to the varying circumstances or frequency involving performance of the prohibited activities.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** The proposed amendments only apply to licensed chiropractic physicians and any unlicensed chiropractic

assistants employed in a chiropractic physician office. If the proposed prohibited activities are currently being performed by unlicensed chiropractic assistants in a licensed chiropractic physician's office, there may be some unknown costs; however, the Division is not able to determine an exact cost due to the varying circumstances or frequency involving performance of the prohibited activities. The proposed amendments further clarify responsibilities of the licensed chiropractic physician to the benefit and safety of the public.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** The proposed amendments only apply to licensed chiropractic physicians and any unlicensed chiropractic assistants employed in a chiropractic physician office. If the proposed prohibited activities are currently being performed by unlicensed chiropractic assistants in a licensed chiropractic physician's office, there may be some unknown costs; however, the Division is not able to determine an exact cost due to the varying circumstances or frequency involving performance of the prohibited activities. The proposed amendments further clarify responsibilities of the licensed chiropractic physician to the benefit and safety of the public.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** This rule filing clarifies the scope of practice for chiropractic assistants. No fiscal impact to businesses is anticipated from such clarification, and as indicated in the rule summary, any impact to licensees is expected to be minimal.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

COMMERCE  
 OCCUPATIONAL AND PROFESSIONAL  
 LICENSING  
 HEBER M WELLS BLDG  
 160 E 300 S  
 SALT LAKE CITY, UT 84111-2316  
 or at the Division of Administrative Rules.

**DIRECT QUESTIONS REGARDING THIS RULE TO:**  
 ♦ Sally Stewart by phone at 801-530-6179, by FAX at 801-530-6511, or by Internet E-mail at sstewart@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 04/02/2012

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE:  
 ♦ 03/06/2012 09:00 AM, Heber Wells Bldg, 160 E 300 S, Conference Room 474 (fourth floor), Salt Lake City, UT

THIS RULE MAY BECOME EFFECTIVE ON: 04/09/2012

AUTHORIZED BY: Mark Steinagel, Director

**R156. Commerce, Occupational and Professional Licensing.  
 R156-73. Chiropractic Physician Practice Act Rule.  
 R156-73-502. Chiropractic Assistant.**

In accordance with Subsection 58-73-102(3), a chiropractic assistant may perform activities related to the practice of chiropractic in accordance with the following:

- (1) The supervising chiropractic physician shall:
  - (a) be currently licensed in Utah;
  - (b) be responsible for the chiropractic activities and services performed by the assistant; and
  - (c) always be available to provide advice, instruction and consultation.
- (2) The supervising chiropractic physician shall never delegate the following to a chiropractic assistant:
  - (a) adjustment of the articulation of the spinal column;
  - (b) diagnosis ~~[of the articulation of the spinal column]~~ or interpretation of examination results;
  - (c) manipulation of the articulation of the spinal column;
  - (d) therapeutic positioning of the articulation of the spinal column;~~and~~
  - (e) administration of injections per Subsection R156-73-501(14);
  - (f) administration of acupuncture services; and
  - (g) administration of laser.

**KEY: chiropractors, licensing, chiropractic physician**  
**Date of Enactment or Last Substantive Amendment: ~~[August 24, 2009]~~ 2012**  
**Notice of Continuation: March 14, 2011**  
**Authorizing, and Implemented or Interpreted Law: 58-73-101; 58-1-106(1)(a); 58-1-202(1)(a)**

Corrections, Administration  
**R251-106**  
 Media Relations

**NOTICE OF PROPOSED RULE**  
 (New Rule)  
 DAR FILE NO.: 35805  
 FILED: 02/02/2012

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** This rule is authorized under Sections 63G-3-201, 64-13-17, 63G-2-102, and 77-19-11. The purpose of this rule is to define the Utah Department of Corrections' (UDC) policy under which persons representing the news media shall be allowed access to correctional institutions, inmates, and other supervised offenders. It is also intended to define UDC actions when a need exists for the safeguarding of information.

**SUMMARY OF THE RULE OR CHANGE:** No substantive changes to previously established Rule R251-106 which expired due to extenuating circumstances with UDC's rule monitor. (DAR NOTE: A corresponding 120-day

(emergency) rule filing that was effective as of 02/01/2012 for Rule R251-106 is under DAR No. 35767 and was published in the February 15, 2012, issue of the Bulletin.)

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 63G-2-102 and Section 63G-3-201 and Section 64-13-10 and Section 64-13-17 and Section 77-19-11

ANTICIPATED COST OR SAVINGS TO:

- ◆ THE STATE BUDGET: No impact--Putting rule back into place with no changes.
- ◆ LOCAL GOVERNMENTS: No impact--Putting rule back into place with no changes.
- ◆ SMALL BUSINESSES: No impact--Putting rule back into place with no changes.
- ◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: No impact--Putting rule back into place with no changes.

COMPLIANCE COSTS FOR AFFECTED PERSONS: No impact--Putting rule back into place with no changes.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule will have no financial impacts since it is a resubmission on an expired rule.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

CORRECTIONS  
ADMINISTRATION  
14717 S MINUTEMAN DR  
DRAPER, UT 84020-9549  
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

- ◆ Greg Peay by phone at 801-201-6052, by FAX at 801-545-5572, or by Internet E-mail at gpeay@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 04/02/2012

THIS RULE MAY BECOME EFFECTIVE ON: 04/09/2012

AUTHORIZED BY: Thomas Patterson, Executive Director

## **R251. Corrections, Administration.**

### **R251-106. Media Relations.**

#### **R251-106-1. Authority and Purpose.**

(1) This rule is authorized under Sections 63G-3-201, 64-13-10, 63G-2-201(12), 63G-2-204, and 77-19-11, of the Utah Code.

(2) The purpose of this rule is to define the UDC's policy under which persons representing the news media shall be allowed access to correctional institutions, inmates and other supervised offenders. It is also intended to define UDC actions when a need exists for the safeguarding of information.

#### **R251-106-2. Definitions.**

(1) "News magazines" means magazines having a general circulation being distributed or sold to the general public by news stands, by mail circulation, or both.

(2) "News media" means collectively those involved with news gathering for newspapers, news magazines, radio, wire services, television or other news services.

(3) "News media members" means persons over the age of eighteen who are primarily employed in the business of gathering or reporting news for newspapers, news magazines, national or international news services, or radio or television stations licensed by the Federal Communications Commission or other recognized news services.

(4) "Newspaper" means, for the purposes of this rule, the publication being circulated among the general public, and containing items of general interest to the public such as political, commercial, religious or social affairs.

(5) "Press" means the print media; also see "news media", generally.

(6) "UDC" means the Utah Department of Corrections;

(7) "UDC-issued media identification" means identification issued by the UDC to members of the news media to ensure a consistent, controlled, dependable means of recognition.

#### **R251-106-3. Standards and Procedures.**

(1) It is the policy of the UDC to permit press access to facilities, inmates, supervised offenders and information. Access shall be:

(a) consistent with the requirements of the constitutions and laws of the United States and State of Utah;

(b) at a level no more restrictive than that allowed the general public.

(2) Access by news media members shall be restricted:

(a) when the UDC finds it necessary to further its legitimate governmental interests, or to maintain safety, security, order, discipline and program goals;

(b) to conform with statutory and constitutional privacy requirements as interpreted by binding case precedent;

(c) when information or access would be contrary to state interests on matters under litigation; or

(d) to safeguard the privacy interests of those under the supervision of the UDC.

(3) The UDC shall make all reasonable efforts to see that the public is kept informed concerning its operations by:

(a) participating and cooperating with the news media to communicate the UDC's mission, goals, policy, procedures, operation, and activities;

(b) providing information in a timely manner, while avoiding disruption or compromise of the UDC's legitimate interests; and

(c) releasing information in accordance with the policy, procedures and requirements of law to provide the public with knowledge about:

(i) UDC philosophy, operations and activities; and

(ii) significant issues and problems facing the UDC.

(4) Inmates shall not be denied the opportunity to communicate with the news media. However, the UDC reserves the right to regulate the manner in which the communication may occur, including:

(a) defining the channels of communication and the circumstances of their use; and

(b) temporarily suspending communication during exigent circumstances including:

(i) riots;

(ii) hostage situations;

(iii) fires or other disasters;

(iv) other inmate disorders; or

(v) emergency lock-down conditions.

(5) Because the UDC faces special management problems with the prison's operation from face-to-face interviews between inmates and the news media:

(a) news media members' requests for face-to-face interviews shall be reviewed on a case-by-case basis by considering the mental competence of the inmate, pending appeals, safety, security, and management issues of the institution;

(b) requests for face-to-face interviews shall be submitted to the Public Information Officer; and

(c) interviews which the UDC determines will jeopardize its legitimate interests, or those of a prison facility, shall not be approved.

(6) Access to executions by the news media shall be consistent with the requirements of Section 77-19-11, of the Utah Code.

(7) News media members shall obtain UDC-issued media identification or shall receive special permission for access to prison property or other UDC Facilities. Special permission may be granted only by the Public Information Officer or Executive Director.

(8) No equipment shall be taken inside the facility unless specifically approved by the Public Information Officer, Deputy Director, or Executive Director. Filming or other recording visits are separate issues and involve individual consideration and decisions.

(9) Ground rules for each opportunity for facility access, filming or recording shall be determined prior to entry.

(10) Access may be terminated at any time without warning, if:

(a) the conditions, ground rules, or other regulations are violated by news media members involved in the access opportunity;

(b) an inmate disorder or other disruption develops;

(c) staff members detect problems created by the media visit which threaten security, safety or order in the facility; or

(d) other reasons related to the legitimate interests of the UDC are present.

(11) Deliberate violation of regulations or other serious misconduct during a facility visit:

(a) shall result in the temporary loss of UDC-issued media identification; and

(b) may result in the permanent loss of UDC-issued media identification.

**KEY: corrections, press, media, prisons**

**Date of Enactment or Last Substantive Amendment: 2012**

**Authorizing, and Implemented or Interpreted Law: 63G-2-102; 63G-3-201; 64-13-10; 64-13-17; 77-19-11**

## Corrections, Administration R251-107 Executions

### NOTICE OF PROPOSED RULE

(New Rule)

DAR FILE NO.: 35806

FILED: 02/02/2012

### RULE ANALYSIS

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** This rule is authorized by Sections 77-19-10 and 77-19-11, in which the Utah Department of Corrections (UDC) shall adopt and enforce rules governing procedures for the execution of judgments of death and attendance of persons at the execution. The purpose of this rule is to address public safety and security within prison facilities prior to, during and immediately following an execution.

**SUMMARY OF THE RULE OR CHANGE:** No substantive changes to previously established Rule R251-107 which expired due to extenuating circumstances with UDC's rules coordinator. (DAR NOTE: A corresponding 120-day (emergency) rule filing that was effective as of 02/01/2012 for Rule R251-107 is under DAR No. 35768 and was published in the February 15, 2012, issue of the Bulletin.)

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 77-19-10 and Section 77-19-11

**ANTICIPATED COST OR SAVINGS TO:**

♦ **THE STATE BUDGET:** No impact--Putting rule back into place with no changes.

♦ **LOCAL GOVERNMENTS:** No impact--Putting rule back into place with no changes.

♦ **SMALL BUSINESSES:** No impact--Putting rule back into place with no changes.

♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** No impact--Putting rule back into place with no changes.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** No impact--Putting rule back into place with no changes.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** This rule will have no financial impacts. Simple resubmission of expired Rule R251-107.

**THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:**

CORRECTIONS  
ADMINISTRATION  
14717 S MINUTEMAN DR  
DRAPER, UT 84020-9549

or at the Division of Administrative Rules.

**DIRECT QUESTIONS REGARDING THIS RULE TO:**

♦ Greg Peay by phone at 801-201-6052, by FAX at 801-545-5572, or by Internet E-mail at gpeay@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 04/02/2012

THIS RULE MAY BECOME EFFECTIVE ON: 04/09/2012

AUTHORIZED BY: Thomas Patterson, Executive Director

**R251. Corrections, Administration.****R251-107. Executions.****R251-107-1. Authority and Purpose.**

(1) This rule is authorized by Sections 63G-3-201, 64-13-10, 77-19-10, and 77-19-11, of the Utah Code, in which the Department shall adopt and enforce rules governing procedures for the execution of judgments of death and attendance of persons at the execution.

(2) The purpose of this rule is to address public safety and security within prison facilities prior to, during and immediately following an execution.

**R251-107-2. Definitions.**

(1) "Department" means Utah Department of Corrections.

(2) "DIO" means Division of Institutional Operations.

(3) "news media" includes persons engaged in news gathering for newspapers, news magazines, radio, television, online news sources, excluding personal blogs, or other news services.

(4) "news media members" means persons over the age of eighteen who are primarily employed in the business of gathering or reporting news for newspapers, news magazines, national or international news services, radio or television stations licensed by the Federal Communications Commission or other recognized news services, such as online media.

(5) "newspaper" means a publication that circulates among the general public, and contains information of general interest to the public regarding political, commercial, religious or social affairs.

(6) "press" means the print media, news media, or both.

(7) "USP" means Utah State Prison.

**R251-107-3. Crowd Control.**

(1) Persons arriving at or driving past the USP shall be routed and controlled in a manner which does not compromise or inhibit:

(a) security;

(b) official escort or movement;

(c) the functions necessary to carry out the execution; or

(d) safety.

(2) Persons controlled/handled through this process shall be handled in a manner with no more restriction than is necessary to carry out the legitimate interests of the Department.

(3) Procedures for crowd control shall be consistent with federal, state and local laws.

(4) Only persons specifically authorized shall be permitted on USP property, except those persons congregating at a designated demonstration/public area.

(5) Persons entering USP property without authorization shall be ordered to leave and may be arrested if:

(a) the trespass was intentional;

(b) the individual failed to immediately leave the USP property following a warning;

(c) the trespass jeopardized safety or security (or) interfered with the lawful business of the Department or its staff or agents; or

(d) it involves entry onto areas clearly posted with signs prohibiting access or trespass.

**R251-107-4. Location and Procedures.**

(1) The executive director of the Department of Corrections or his designee shall ensure that the method of judgment of death specified in the warrant is carried out at a secure correctional facility operated by the department and at an hour determined by the department on the date specified in the warrant.

(2) When the judgment of death is to be carried out by lethal intravenous injection, the executive director of the department or his designee shall select two or more persons trained in accordance with accepted medical practices to administer intravenous injections, who shall each administer a continuous intravenous injection, one of which shall be of a lethal quantity of sodium thiopental or other equally or more effective substance to cause death.

(3) If the judgment of death is to be carried out by firing squad under Subsection 77-18-5.5(3) or (4), of the Utah Code, the executive director or his designee shall select a five-person firing squad of peace officers.

(4) Death shall be certified by a physician.

**R251-107-5. Demonstration and Public Access.**

(1) The Executive Director may permit limited access to a designated portion of state property on Minuteman Drive at or near the Fred House Academy for the public to gather demonstrate during an execution event.

(2) No person may violate the intent of clearly marked signs, fences, doors or other indicant relative to prohibitions against entering any prison property or facility for which permission to enter may not be marked.

(3) The Department neither recognizes, nor is bound by, the policies, allowances or arrangements which may have occurred at prior executions, events or on prior occasions, and by this rule any arrangement provided for public access at previous executions or demonstrations is invalidated.

(4) The Executive Director or Warden may at any time withdraw permission without notice in the event of riot, disturbance, or other factors that in the opinion of the Warden/designee or Executive Director/designee jeopardizes the security, peace, order or any function of the prison.

**R251-107-6. Witnesses.**

(1) The Department will implement the standards and procedures for inmate witnesses outlined in Section 77-19-11, of the Utah Code.

(2) As a condition to attending the execution, each designated witness shall be required by the Department to sign an agreement setting forth their willingness to conduct themselves while on prison property in a manner consistent with the legitimate penological, security and safety concerns as delineated by the Department.

(3) Witnesses shall be searched prior to being allowed to witness the execution.

**R251-107-7. News Media.**

(1) The Department shall permit press access to the execution and information concerning the execution consistent with the requirements of the constitutions and laws of the United States and State of Utah.

(2) The Department and the Utah Code recognize the need for the public to be informed concerning executions.

(a) The Department will participate and cooperate with the news media to inform the public concerning the execution; and

(b) information should be provided in a timely manner.

(3) The Executive Director shall be responsible for selecting the members of the news media who will be permitted to witness the execution.

(a) After the court sets a date for the execution of the death penalty, news directors or editors desirous to have a staff member witness the execution may submit, in writing, such request for no more than one news media staff member. The request shall be addressed to the Executive Director and received at least 30 days prior to the execution.

(b) When administrative convenience or fairness to the news media dictates, the Department, in its discretion, may extend the request deadline.

(c) Requests for consideration may be granted by the Executive Director provided they contain the following:

(i) a statement setting forth facts showing that the requesting individual falls within the definition of member of the "press" and "news media" as set forth in this rule;

(ii) an agreement to act as a pool representative for other news gathering agencies desiring information on the execution; and

(iii) an agreement that the media member will abide by all of the conditions, rules and regulations while in attendance at the execution.

(d) Upon receipt of a news director's or editor's request for permission for news media witnesses to attend the execution, the Executive Director may take the steps necessary to verify the statements made in the request. After verifying the information in the request, selection of witnesses shall be made by the Executive Director.

(e) As a condition to attending the execution, each designated media witness shall be required by the department to execute an agreement setting forth their willingness to conduct themselves while on prison property in a manner consistent with the legitimate penological, security and safety concerns as delineated by the department.

(f) Media witnesses shall be searched prior to being allowed to witness the execution.

(g) The Department shall arrange for pre-execution briefings, distribution of media briefing packages, briefings throughout the execution event, and post-execution briefings by the news media who witnessed the execution.

(4) Persons representing the news media witnessing the execution shall be required to sign a statement or release absolving the institution or any of its staff from any legal recourse resulting from the exercise of search requirements or other provisions of the witness agreement.

(5) News media representatives shall, after being returned from the execution to the staging area, act as pool representatives for other media representatives covering the event.

(a) The pool representatives shall meet at the designated media center and provide an account of the execution and shall freely answer all questions put to them by other media members and shall not be permitted to report their coverage of the execution back to their respective news organizations until after the non-attending media members have had the benefit of the pool representatives' account of the execution.

(b) News media members attending the post-execution briefing shall agree to remain in the briefing room and not leave nor communicate with persons outside the briefing room until the briefing is over.

(c) The briefing shall end when the attending news media members are through asking questions or after 60 minutes, whichever comes first.

(d) Any film/videotape obtained by a pool photographer shall not be used in any news or other broadcast until made available to all agencies participating in the pool. All agencies receiving the film/videotape will be permitted to use them in news coverage and to retain the film/videotape for file footage.

(6) The Department may alter these processes to impose additional conditions, restrictions and limitations on media coverage of the execution when requirements become necessary for the preservation of prison security, personal safety or other legitimate interests which may be in jeopardy.

(7) If extraordinary circumstances develop, additional conditions and restrictions shall be no more restrictive than required to meet the exigent circumstances.

**R251-107-8. Authority of Executive Director.**

The Executive Director/designee shall be authorized to make changes in policies and procedures that are necessary to ensure the interest of security, safety, and professionalism is maintained during the planning, training, and administering of the execution order.

**KEY: corrections, executions, prisons**

**Date of Enactment or Last Substantive Amendment: 2012**

**Authorizing, and Implemented or Interpreted Law: 77-19-10; 77-19-11**

Corrections, Administration  
**R251-108**  
Adjudicative Proceedings

**NOTICE OF PROPOSED RULE**

(New Rule)

DAR FILE NO.: 35807

FILED: 02/02/2012

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** The purpose of this rule is to establish a procedure by which informal adjudicative proceedings shall be conducted as a result of a notice of agency action, or a request by a person for agency action regarding the Utah Department of Corrections (UDC) rules, orders, policies or procedures. This rule shall not apply to internal personnel actions conducted within the Department. This rule is authorized by Sections 63G-3-201, 63G-3-202, and 63G-4203.

**SUMMARY OF THE RULE OR CHANGE:** No substantive changes to previously established Rule R251-108 which expired due to extenuating circumstances with UDC's staff member. (DAR NOTE: A corresponding 120-day (emergency) rule filing that was effective as of 02/01/2012 for Rule R251-108 is under DAR No. 35769 and was published in the February 15, 2012, issue of the Bulletin.)

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 63G-3-201 and Section 63G-4-202 and Section 63G-4-203

**ANTICIPATED COST OR SAVINGS TO:**

- ◆ **THE STATE BUDGET:** No impact--Putting rule back into place with no changes.
- ◆ **LOCAL GOVERNMENTS:** No impact--Putting rule back into place with no changes.
- ◆ **SMALL BUSINESSES:** No impact--Putting rule back into place with no changes.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** No impact--Putting rule back into place with no changes.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** No impact--Putting rule back into place with no changes.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** This rule will have no financial impacts. Simple resubmission of expired Rule R251-108.

**THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:**

CORRECTIONS  
ADMINISTRATION  
14717 S MINUTEMAN DR  
DRAPER, UT 84020-9549  
or at the Division of Administrative Rules.

**DIRECT QUESTIONS REGARDING THIS RULE TO:**

- ◆ Greg Peay by phone at 801-201-6052, by FAX at 801-545-5572, or by Internet E-mail at gpeay@utah.gov

**INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 04/02/2012**

**THIS RULE MAY BECOME EFFECTIVE ON:** 04/09/2012

**AUTHORIZED BY:** Thomas Patterson, Executive Director

**R251. Corrections, Administration.****R251-108. Adjudicative Proceedings.****R251-108-1. Purpose and Authority.**

(1) The purpose of this rule is to establish a procedure by which informal adjudicative proceedings shall be conducted as a result of a notice of agency action, or a request by a person for agency action regarding Department rules, orders, policies or procedures. This rule shall not apply to internal personnel actions conducted within the Department.

(2) This rule is authorized by Sections 63G-3-201, 63G-4-202, 63G-4-203, and 64-13-10, of the Utah Code.

**R251-108-2. Definitions.**

(1) "Adjudicative proceeding" means a departmental action or proceeding.

(2) "Department" means Department of Corrections.

(3) "Hearing" means an adjudicative proceeding which may include not only a face-to-face meeting, but also a proceeding/meeting conducted by telephone, television or other electronic means.

(4) "Person" means an individual, group of individuals, partnership, corporation, association, political subdivision or its units, governmental subdivision or its units, public or private organization or entity of any character, or another agency.

(5) "Personnel actions" means any administrative hearings, grievance proceedings and dispositions, staff disciplinary process, promotions, demotions, transfers, or terminations within the department.

(6) "Presiding officer" means an agency head, or an individual or body of individuals designated by the agency head, by the agency's rules, or by statute to conduct an adjudicative proceeding; if fairness to the parties is not compromised, an agency may substitute one presiding officer for another during any proceeding.

(7) "Petition" means a request for the department to determine the legality of agency action or the applicability of policies, procedures, rules, or regulations relating to agency actions associated with the governing of persons or entities outside the Department.

**R251-108-3. Policy.**

It is the policy of the Department that:

(1) all adjudicative proceedings not exempted under the provisions of Section 63G-4-202, of the Utah Code, shall be informal;

(2) upon receipt of a petition, the Department shall conduct an informal hearing regarding its actions or the applicability of Department policies, rules, orders or procedures that relate to particular actions;

(3) the Department shall provide forms and instructions for persons or entities who request a hearing;

(4) hearings shall be held in accordance with procedures outlined in Section 63G-4-203, of the Utah Code;

(5) the provisions of this rule do not affect any legal remedies otherwise available to a person or an entity to:

(a) compel the Department to take action; or

(b) challenge a rule of the Department;

(6) the provisions of this rule do not preclude the Department, or the presiding officer, prior to or during an adjudicative proceeding, from requesting or ordering conferences with parties and interested persons to:

(a) encourage settlement;

(b) clarify the issues;

(c) simplify the evidence;

(d) expedite the proceedings; or

(e) grant summary judgment or a timely motion to dismiss;

(7) a presiding officer may lengthen or shorten any time period prescribed in this rule, with the exception of those time periods established in Title 63G, Chapter 4, of the Utah Code, applicable to this rule;

(8) the Executive Director/designee shall appoint a presiding officer to consider a petition within five working days after its receipt;

(9) the presiding officer shall conduct a hearing regarding allegations contained in the petition within 30 working days after notification by the Executive Director;

(10) the presiding officer shall issue a ruling subject to the final approval of the Executive Director within 15 working days following the hearing and forward a copy of same by certified mail to the petitioner;

(11) the petition and a copy of the ruling shall be retained in the Department's records for a minimum of two years;

(12) the ruling issued by the presiding officer terminates the informal adjudicative proceeding process; and

(13) appeals shall be submitted to a court of competent jurisdiction as outlined in Sections 63G-4-401 and 402.

**KEY: corrections, administrative procedures**

**Date of Enactment or Last Substantive Amendment: 2012**

**Authorizing, and Implemented or Interpreted Law: 63G-3-201; 63G-4-202; 63G-4-203**

## Corrections, Administration

### R251-703

#### Vehicle Direction Station

#### NOTICE OF PROPOSED RULE

(New Rule)

DAR FILE NO.: 35808

FILED: 02/02/2012

#### RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is authorized under Sections 63G-3-201, 64-13-14, and 64-13-10. The purpose of this rule is to define the Utah Department of Corrections' (UDC) policy, procedures, and requirements for the operation of the Vehicle

Direction Stations located at the South Point and Central Utah Correctional facilities.

SUMMARY OF THE RULE OR CHANGE: No substantive changes to previously established Rule R251-703 which expired due to extenuating circumstances with UDC's rules coordinator. (DAR NOTE: A corresponding 120-day (emergency) rule filing that was effective as of 02/01/2012 for Rule R251-703 is under DAR No. 35770 and was published in the February 15, 2012, issue of the Bulletin.)

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 64-13-14

ANTICIPATED COST OR SAVINGS TO:

◆ THE STATE BUDGET: No impact--Putting rule back into place with no changes.

◆ LOCAL GOVERNMENTS: No impact--Putting rule back into place with no changes.

◆ SMALL BUSINESSES: No impact--Putting rule back into place with no changes.

◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: No impact--Putting rule back into place with no changes.

COMPLIANCE COSTS FOR AFFECTED PERSONS: No impact--Putting rule back into place with no changes.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule will have no financial impacts. Simple resubmission of expired Rule R251-703.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

CORRECTIONS  
ADMINISTRATION  
14717 S MINUTEMAN DR  
DRAPER, UT 84020-9549  
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Greg Peay by phone at 801-201-6052, by FAX at 801-545-5572, or by Internet E-mail at gpeay@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 04/02/2012

THIS RULE MAY BECOME EFFECTIVE ON: 04/09/2012

AUTHORIZED BY: Thomas Patterson, Executive Director

**R251. Corrections, Administration.**  
**R251-703. Vehicle Direction Station.**  
**R251-703-1. Authority and Purpose.**

(1) This rule is authorized under Sections 63G-3-201, 64-13-14 and 64-13-10, of the Utah Code.

(2) The purpose of this rule is to define the Department's policy, procedure and requirements for the operation of the Vehicle Direction Stations located at the South Point and Central Utah Correctional facilities.

**R251-703-2. Definitions.**

(1) "Central Utah Correctional Facility" or "CUCF" means the institutional housing unit located in Gunnison.

(2) "Civilian" means vendor, deliveryman, construction worker, family members, friend, or other person not acting on behalf of UDC or an allied agency in an official capacity who needs access to prison property.

(3) "Department" means Department of Corrections.

(4) "DIO" means Division of Institutional Operations.

(5) "ID" means identification issued by an authorized government agency.

(6) "South Point" means the Uinta, Wasatch and Oquirrh facilities at the Utah State Prison.

(7) "VDS" means Vehicle Direction Station.

(8) "Visitor" means any person accessing prison property other than a Utah Department of Corrections employee, an inmate, or offender.

**R251-703-3. Policy.**

It is the policy of the Department that:

(1) the Department shall maintain a Vehicle Direction Station at the main entrance of South Point, and Central Utah Correctional Facility to control access of vehicles and persons entering or leaving institutional property;

(2) the Vehicle Direction Station (VDS) shall be staffed by an armed member of the Security Unit. The VDS shall be staffed from 0600 to 2200 hours daily;

(3) drivers using the entrance road to the VDS shall observe state traffic laws, keep the road free from equipment or vehicles that would obstruct visibility or impede the free flow of traffic, and follow directives of VDS staff charged with maintaining entry facilities;

(4) drivers and pedestrians using the entrance road shall heed directions of VDS staff, to ensure the safety of vehicular and pedestrian traffic;

(5) visitors to the prison shall be responsible to read and follow signs posted on the entrance road to the VDS prohibiting contraband from being introduced onto prison property;

(6) since the VDS is the initial control point for controlling contraband from being brought onto prison property, visitors may be subjected to search and seizure procedures as provided by law;

(7) the VDS shall be the control point for limiting entry to institutional facilities to persons whose presence is necessary to the institution and to authorized visitors of inmates;

(8) to prevent escape of inmates, a vehicle exiting South Point or CUCF shall be subject to a search. Persons in exiting vehicles shall be required to provide identification and verification of clearance;

(9) civilians 16 years of age and older, in a vehicle or on foot, shall be required to have picture ID in their possession and to submit it for inspection, before being allowed through the VDS. If they do not have a valid ID:

(a) access to the prison through the VDS shall not be allowed;

(b) they shall not be allowed to wait or park on the entrance road to any institutional facility or on any roads adjacent to an institutional facility; but

(c) they may be allowed to wait in a designated parking area adjacent to the VDS;

(10) civilians under 16 years of age shall not be permitted access unless accompanied by an approved adult;

(11) civilians found in the possession of weapons or contraband at the VDS under circumstances which do not constitute a violation of law shall be required to leave prison property;

(12) peace officers from allied agencies shall either secure their firearms at the VDS, another approved location, or lock their weapons in their vehicle trunk if the vehicle will not penetrate the secure perimeter;

(13) persons who have a valid outstanding warrant may be arrested and either cited or transported, depending on the needs of the UDC and the agency holding the warrant;

(14) persons who have a valid outstanding warrant, if not arrested, may be denied entry to prison property until the warrant has been adjudicated; and

(15) visitors shall comply with all directives of VDS officers.

**KEY: prisons, corrections**

**Date of Enactment or Last Substantive Amendment: 2012**

**Authorizing, and Implemented or Interpreted Law: 64-13-14**

Corrections, Administration  
**R251-704**  
North Gate

**NOTICE OF PROPOSED RULE**

(New Rule)

DAR FILE NO.: 35809

FILED: 02/02/2012

**RULE ANALYSIS**

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is authorized by Sections 63G-3-201, 64-13-10, and 64-13-14 which allows the Department to adopt standards and rules in accordance with its responsibilities. The purpose of this chapter is to provide the Utah Department of Corrections' (UDC) policy, procedures, and requirements for the North Gate of the South Point Complex of the Prison.

SUMMARY OF THE RULE OR CHANGE: No substantive changes to previously established Rule R251-704 which expired due to extenuating circumstances with UDC's rules coordinator. (DAR NOTE: A corresponding 120-day (emergency) rule filing that was effective as of 02/01/2012 for Rule R251-704 is under DAR No. 35771 and was published in the February 15, 2012, issue of the Bulletin.)

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 64-13-14

ANTICIPATED COST OR SAVINGS TO:

- ◆ THE STATE BUDGET: No impact--Putting rule back into place with no changes.
- ◆ LOCAL GOVERNMENTS: No impact--Putting rule back into place with no changes.
- ◆ SMALL BUSINESSES: No impact--Putting rule back into place with no changes.
- ◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: No impact--Putting rule back into place with no changes.

COMPLIANCE COSTS FOR AFFECTED PERSONS: No impact--Putting rule back into place with no changes.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule will have no financial impacts. Simple resubmission of expired Rule R251-704.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

CORRECTIONS  
ADMINISTRATION  
14717 S MINUTEMAN DR  
DRAPER, UT 84020-9549  
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

- ◆ Greg Peay by phone at 801-201-6052, by FAX at 801-545-5572, or by Internet E-mail at gpeay@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 04/02/2012

THIS RULE MAY BECOME EFFECTIVE ON: 04/09/2012

AUTHORIZED BY: Thomas Patterson, Executive Director

**R251. Corrections, Administration.**

**R251-704. North Gate.**

**R251-704-1. Authority and Purpose.**

A. This rule is authorized by Sections 63G-3-201, 64-13-10, and 64-13-14, of the Utah Code, which allows the Department to adopt standards and rules in accordance with its responsibilities.

B. The purpose of this chapter is to provide the Department's policy, procedures and requirements for the North Gate of the South Point Complex of the Prison.

**R251-704-2. Definitions.**

1. "ID" means identification.
2. "SSD" means Special Services Dormitory.

**R251-704-3. Standards and Procedures.**

It is the policy of the Department that:

A. access through the North Gate shall be restricted to authorized persons at authorized times to control contraband, prevent the escape of inmates and to otherwise further the legitimate security interests of the USP;

B. regulations shall be enacted to control access through the North Gate, particularly as that access involves persons who are not members of the USP staff;

C. vehicles accessing the North Gate shall be thoroughly searched to prevent the flow of contraband, prevent the possibility of escape and to otherwise further the legitimate security interests of the USP;

D. vehicles wishing to exit the North Gate which are loaded in such a manner which prohibits the North Gate officer from giving it a thorough shake down shall:

1. be accompanied by a corrections officer who witnessed the loading of the vehicle and verifies, by signing the North Gate Vehicle Security Warrant Form, that the security of the vehicle was maintained during loading to prevent escape; and

2. be detained at the North Gate until all inmates are counted.

E. vendor access through the North Gate may be allowed from 0700 to 1500 hours Monday through Friday;

F. deliveries at other than designated times shall require a special clearance signed by the Security Deputy Warden/designee.

G. the garbage truck:

1. should be allowed access to through the North Gate as needed, beginning at approximately 0400; and

2. shall have an Enforcement Officer escort while inside the secure perimeter;

H. access for contractors and construction workers should be granted between 0700 and 1700 hours, unless an emergency exists that would prevent access;

I. non-prison staff (i.e., contract professional staff including psychologists, vocational rehabilitation personnel, attorneys, legal services providers, etc.), including all volunteers shall not ordinarily be allowed access through the North Gate, but shall be required to use the Oquirrh, Wasatch, or Uinta administration building sallyport for access;

J. vendors shall be required to surrender their driver's license, or official identification to the North Gate officer while inside the compound (any exception shall be cleared through the Watch Commander);

K. construction workers and contractors shall provide name, legal address, social security number, driver's license number, date of birth to the appropriate prison personnel at least 72 hours prior to access onto prison property;

L. prior to exiting through the North Gate, all persons shall be identified;

M. all persons are subject to a search of their person, property and vehicle as a condition of entry onto prison property;

N. the North Gate officer shall search all vehicles to ensure that no unauthorized passengers or contraband items are allowed access through the North Gate; and

O. vehicle operators and passengers shall exit the vehicle during a vehicle search.

**KEY: correctional institutions, security measures**

**Date of Enactment or Last Substantive Amendment: 2012**

**Authorizing, and Implemented or Interpreted Law: 64-13-14**

**Corrections, Administration**  
**R251-705**  
**Inmate Mail Procedures**

**NOTICE OF PROPOSED RULE**

(New Rule)

DAR FILE NO.: 35810

FILED: 02/02/2012

**RULE ANALYSIS**

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is authorized by Sections 63G-3-201 and 64-13-10, and Subsection 64-13-17(4) which allow the Utah Department of Corrections (UDC) to adopt standards and rules in accordance with its responsibilities. The purpose of this section is to establish the UDC's policies and procedures for processing mail received in the DIO Mail Unit.

SUMMARY OF THE RULE OR CHANGE: No substantive changes in previously established Rule R251-705 which expired due to extenuating circumstances with UDC's rule monitor. (DAR NOTE: A corresponding 120-day (emergency) rule filing that was effective as of 02/01/2012 for Rule R251-705 is under DAR No. 35772 and was published in the February 15, 2012, issue of the Bulletin.)

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 64-13-10 and Subsection 64-13-17(3)

ANTICIPATED COST OR SAVINGS TO:

- ◆ THE STATE BUDGET: No impact--Putting rule back into place with no changes.
- ◆ LOCAL GOVERNMENTS: No impact--Putting rule back into place with no changes.
- ◆ SMALL BUSINESSES: No impact--Putting rule back into place with no changes.
- ◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: No impact--Putting rule back into place with no changes.

COMPLIANCE COSTS FOR AFFECTED PERSONS: No impact--Putting rule back into place with no changes.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule will have no financial impacts. Simple resubmission of expired Rule R251-705.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

CORRECTIONS  
 ADMINISTRATION  
 14717 S MINUTEMAN DR  
 DRAPER, UT 84020-9549  
 or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Greg Peay by phone at 801-201-6052, by FAX at 801-545-5572, or by Internet E-mail at gpeay@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 04/02/2012

THIS RULE MAY BECOME EFFECTIVE ON: 04/09/2012

AUTHORIZED BY: Thomas Patterson, Executive Director

**R251. Corrections, Administration.**

**R251-705. Inmate Mail Procedures.**

**R251-705-1. Authority and Purpose.**

(1) This rule is authorized by Sections 63G-3-201, 64-13-10 and 64-13-17(4), of the Utah Code, which allows the Department to adopt standards and rules in accordance with its responsibilities.

(2) The purpose of this section is to establish the UDC's policies and procedures for processing mail received in the DIO Mail Unit.

**R251-705-2. Definitions.**

(1) "Catalog" means a systematized list whose sole purpose is to feature descriptions of items for sale.

(2) "Department" means the Department of Corrections.

(3) "DIO" means Division of Institutional Operations.

(4) "Inspect" means open and examine a letter, correspondence or other material with the primary objective to detect false labeling, contraband, currency, or negotiable instruments.

(5) "Inter-department mail" means mail sent between departments within the state.

(6) "Inter-department mail" mean mail sent from office to office within a department.

(7) "Mail" means written material sent or received by inmates through the United States Postal Service.

(8) "Money instruments" means currency, coin, personal checks, money orders and cashier's or non-personal checks.

(9) "Nuisance contraband" means items that may include, but are not limited to, paper fasteners, hair, ribbons, pins, rubber bands, pressed leaves and/or flowers, promotional gimmicks, gum, stickers, computer disks, maps, calendars, balloons, and other such items having no intrinsic value or not approved by the department administration to be in the possession of the inmates.

(10) "Privileged mail" means correspondence with a person identified by this chapter relating to the official capacity of that person, which has been properly labeled to claim privileged status.

(11) "Publisher-only rule" means a rule limiting books, audio media, magazines, newspapers, etc. to those sent directly from the publisher, a book or tape club or a licensed book store. All media shall be new and audio shall be factory sealed and the return address should be commercially printed or stamped.

(12) "Reasonable cause" means information that could prompt a reasonable person to believe or suspect that there is or might be a threat to the safety, security or management of the UDC facility or that could be harmful to persons.

(13) "UDC" means Utah Department of Corrections.

(14) "USP" means Utah State Prison.

**R251-705-3. Standards and Procedures.**

It is the policy of the Department that:

(1) inmate mail shall comply with the Constitution and Laws of the United States, the Constitution and Laws of the State of Utah, and the authorized written policies and procedures of the UDC.

(2) inmates shall be permitted to send and receive mail while in custody of the UDC in the manner defined by this rule.

(3) nothing in this rule should be interpreted as creating a greater entitlement for inmates or those with whom they correspond than that currently required by law.

(4) inmate mail regulations shall:

(a) further the legitimate interests of the UDC; while

(b) balancing the UDC's interests with those of the general public and inmates.

(5) mail received for inmates at the USP shall be delivered to the USP Mail Unit for processing and:

(a) shall be opened and inspected;

(b) may be read at the discretion of the Department;

(c) may be photocopied when such copying is reasonably related to the furtherance of a legitimate Department interest;

(d) may be refused, denied or confiscated where reasonable cause exists to believe the contents may adversely impact the safety, security, order or treatment goals of the Department;

(e) may be used as evidence in criminal, civil or administrative trials or hearings;

(f) is entitled to no expectation of privacy;

(g) all forms of nuisance contraband shall be confiscated and disposed of without notice or opportunity for appeal; and

(h) shall be delivered to inmates without unreasonable delay;

(6) catalog purchases other than through the DIO Commissary catalog are not authorized and catalogs shall not be accepted through the mail, except when sent 1st or 2nd class or from a legal, school, religious or government printing office.

(7) staff-to-inmate mail shall not be sent in "Inter/Intra-department Delivery" envelopes, but in regular mailing envelopes;

(8) outgoing inmate mail and inmate inter/intra-department mail shall be deposited in the housing units' outgoing mail depository, picked up by USP Mail Unit staff, and delivered to the USP Mail Unit for processing;

(9) an inmate shall not direct nor establish a new business through the mail unless authorized by the Warden of the facility;

(10) an inmate who corresponds concerning a legitimately held business, shall correspond through his attorney or a party holding a power of attorney;

(11) an inmate is not authorized to establish credit transactions through the mail while confined unless authorized by the Warden of the facility;

(12) fund raising by inmates for personal gain is prohibited;

(13) envelopes received by the USP Mail Unit displaying threatening, negative gestures or comments, extraneous materials, or grossly offensive sexual comments, shall be confiscated, declared

contraband, placed into evidence, and the inmate shall receive disciplinary action;

(14) the publisher-only rule shall govern the receipt of all incoming books, audio media, magazines, and newspapers;

(15) certain types of mail are entitled to constitutionally protected confidentiality (or privilege); accordingly, this privilege prohibits qualifying correspondence material from being read without cause by staff;

(16) incoming privileged mail:

(a) shall be inspected, but only in the presence of the inmate addressee;

(b) shall not be perused;

(c) shall not be photocopied; and

(d) may be denied only for reasonable cause and upon instruction of the DIO Director/designee;

(17) outgoing privileged mail:

(a) shall be inspected only when there is reasonable cause to believe that the correspondence:

(i) contains material which would significantly endanger the security or safety of the Institution; or

(ii) is misrepresented as legal material;

(b) shall only be inspected in the presence of the inmate sender;

(c) shall not be perused;

(d) shall not be photocopied;

(e) may only be denied for a reasonable cause, and upon instruction of the DIO Director/designee; and

(f) from an inmate that cannot be identified, shall be forwarded to the deputy warden who supervises the mail unit, or his or her designee, who will make a determination of the disposition.

(18) all inmate inter/intra-departmental mail shall be processed through the USP Mail Unit;

(19) inmate-to-inmate correspondence shall not be permitted, unless:

(a) there is a compelling justification for an exception;

(b) there is no alternate means of accomplishing that compelling need; and

(c) the inmates present a minimal risk, according to UDC standards, to security, order and/or safety;

(20) inmates have no entitlement to inmate-to-inmate correspondence created by the constitutions of the United States or the State of Utah;

(21) personal mail written in a language other than English may be delayed for purposes of translation;

(22) the USP Mail Unit shall not accept postage-due mail unless payment is waived by the deliverer;

(23) the USP Mail Unit shall not accept letters, cards, money instruments, or property items for which there is reasonable cause to believe the items are contaminated, defaced or handled in such a way as to be offensive.

(24) items received that cannot be searched without destruction or alteration (e.g., electronic greeting cards, multilayered cards, polaroid photographs, etc.) shall be denied and returned to the sender;

(25) inmates are prohibited from receiving currency or personal checks; and

(26) to be identified as incoming privileged mail, the correspondence shall be from an attorney or other sender qualified

for privileged correspondence, be properly labeled as claiming privileged status, and have a return address clearly indicating a judicial agency, law firm, individual attorney, or other approved agency or person.

**KEY: corrections, prisons**

**Date of Enactment or Last Substantive Amendment: 2012**

**Authorizing, and Implemented or Interpreted Law: 64-13-10; 64-13-17(3)**

Corrections, Administration  
**R251-706**  
 Inmate Visiting

**NOTICE OF PROPOSED RULE**

(New Rule)

DAR FILE NO.: 35811

FILED: 02/02/2012

**RULE ANALYSIS**

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is authorized by Sections 63G-3-201, 64-13-10, and 64-13-17. The purpose of this rule is to provide the Utah Department of Corrections' (UDC) policies, procedures, and requirements for inmate visitation at the Division of Institutional Operations.

SUMMARY OF THE RULE OR CHANGE: No substantive changes to previously established Rule R251-706 which expired due to extenuating circumstances with UDC's rule monitor. (DAR NOTE: A corresponding 120-day (emergency) rule filing that was effective as of 02/01/2012 for Rule R251-706 is under DAR No. 35773 and was published in the February 15, 2012, issue of the Bulletin.)

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 63G-3-201 and Section 64-13-10 and Section 64-13-17

ANTICIPATED COST OR SAVINGS TO:

- ◆ THE STATE BUDGET: No impact--Putting rule back into place with no changes.
- ◆ LOCAL GOVERNMENTS: No impact--Putting rule back into place with no changes.
- ◆ SMALL BUSINESSES: No impact--Putting rule back into place with no changes.
- ◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: No impact--Putting rule back into place with no changes.

COMPLIANCE COSTS FOR AFFECTED PERSONS: No impact--Putting rule back into place with no changes.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule will have no financial impacts. Simple resubmission of Rule R251-706.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

CORRECTIONS  
 ADMINISTRATION  
 14717 S MINUTEMAN DR  
 DRAPER, UT 84020-9549  
 or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Greg Peay by phone at 801-201-6052, by FAX at 801-545-5572, or by Internet E-mail at gpeay@utah.gov

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THIS RULE MAY BECOME EFFECTIVE ON: 04/09/2012

AUTHORIZED BY: Thomas Patterson, Executive Director

**R251. Corrections, Administration.**

**R251-706. Inmate Visiting.**

**R251-706-1. Authority and Purpose.**

(1) This rule is authorized by Sections 63G-3-201, 64-13-10 and 64-13-17, of the Utah Code.

(2) The purpose of this rule is to provide the Department's policies, procedures and requirements for inmate visitation at the Division of Institutional Operations.

**R251-706-2. Definitions.**

(1) "abusive" means insulting or harmful.

(2) "adult" means anyone eighteen years of age or older.

(3) "approved adult" means an individual eighteen years of age or older, cleared through background checks and approved by the facility visiting staff to visit an inmate.

(4) "approved visitor" means an individual cleared through BCI and approved by the facility visiting staff to visit an inmate.

(5) "barrier visit" means a non-contact visit where the visitor and inmate are separated by glazing, screen, or other partition.

(6) "BCI" means Bureau of Criminal Identification.

(7) "contraband, illegal" means any item in the possession of an inmate or visitor which violates a federal or state law.

(8) "contraband, nuisance" means any item in the possession of an inmate or visitor which does not violate a federal or state law but does violate a prison policy.

(9) "DIO" means Division of Institutional Operations.

(10) "DMV" means Department of Motor Vehicles.

(11) "emergency visit" means visit occasioned by a verifiable emergency, such as serious illness, accident, or death of an inmate's immediate family member.

(12) "foul" means offensive to the senses; vulgar.

(13) "immediate family" means spouse, children, stepchildren, mother, father, brother, sister, mother-in-law, father-in-law, sister-in-law, brother-in-law, step-mother, step-father, step-brother, step-sister, half-brother, half-sister, grandmother, grandfather and grandchildren.

(14) "inmate visiting request form" means a form given to inmates during the Reception and Orientation process or at a later time to add persons to their approved visitor lists.

(15) "Minor" means any person under the age of 18 years old.

(16) "NCIC" means National Crime Information Center.

(17) "NLETS" means National Law Enforcement Teletype System.

(18) "OMR" means Offender Management Review team.

(19) "positive identification" means document containing a photograph and date of birth, including but not limited to a valid driver's license, federal or state identification card, military identification or passport; does not include credit cards, social security card, employment card, or student identification card.

(20) "R and O" means reception and orientation process for new inmates and parole violators committed to the institution.

(21) "special visits" means visits authorized by the warden/designee for circumstances other than normal visiting procedures.

(22) "UDC" means Utah Department of Corrections.

(23) "Uinta" means housing unit for maximum security inmates.

(24) "USP" means Utah State Prison, including Draper and CUCF.

(25) "visit" means a short meeting with an approved visitor; a privilege, not a right, afforded to inmates/visitors at the Utah State Prison.

(26) "visitor's consent form" means a form given to an approved visitor requiring the visitor's signature indicating that the visitor has received, understands, and shall adhere to the visitor rules.

### **R251-706-3. Visiting Policies.**

(1) Visitors shall complete a visitor's consent form prior to the initial visit.

(2) Visitors shall receive a copy of the visitor rules and regulations which are distributed at the time of the initial visit. Prior to the first visit, visitors shall read the rules and regulations and shall sign that they understand and will comply with the visiting rules.

(3) Any employee, contractor, volunteer or student who has terminated employment or services with the Department may not be cleared for visits until one year has elapsed from the time of termination of employment or services.

(4) Visitors shall be modestly dressed to be permitted to visit. Bare midribs, hooded sweat shirts, sleeveless, or see-through blouses or shirts, shorts, tube tops, halters, extremely tight or revealing clothing, dresses or skirts more than three inches above the knees, or sexually revealing attire are not allowed. Children under the age of twelve may wear shorts and sleeveless shirts.

(5) Upon reasonable suspicion, visitors shall be subject to search, and visitation may be denied for failure to submit to the search request.

(6) Prior to entering the Utah State Prison visiting room, visitors may be screened with a metal detector.

(7) If contraband is discovered, the duty officer shall be notified, and:

(a) visitors attempting to introduce nuisance contraband, which is in violation of DIO policies and procedures, onto prison property may have their visiting privileges suspended, restricted or revoked; or

(b) visitors attempting to introduce illegal contraband onto prison property may be subject to criminal prosecution and suspension of visiting privileges.

(8) Visitors shall not be permitted to bring pets or other animals, except for seeing-eye dogs, onto prison property.

(9) Food items from outside the prison shall not be allowed.

(10) Visits should not exceed two hours. Visiting hours may be reduced or extended on any day based on facility visiting conditions or special holiday schedules. On special visits, conditions including the length of the visit are approved based on an assessment of the request and capabilities of the facility.

(11) Personal property such as purses, wallets, keys, blankets, coats and sweaters worn as outer garments, and money (except for vending machine change in facilities which allow them) are not allowed in the visiting room.

(12) Visitors with babies may bring into the visiting area infant care items that are reasonably needed during the visit. Staff shall accommodate personal need items that do not present a threat to the safety and security of the inmates, staff, and the institution.

(13) The UDC shall not be responsible for loss of personal property. Visitors may secure items in UDC lockers where available.

(14) Visitors shall not be permitted to visit during any scheduled visiting period if less than 30 minutes remain in the visiting period.

### **R251-706-4. Uinta Visiting.**

Visitors to the Uinta facility may be required to have additional clearances by the warden/designee or unit manager, prior to visiting the facility.

### **R251-706-5. Processing Visiting Application.**

(1) A visiting application shall be completed by inmates who wish to have a visitor. It is the inmate's responsibility to ensure that the visiting application information is complete and approved by facility visiting staff prior to the first visit.

(2) Visiting applications shall be checked by facility visiting staff through BCI, NLETS, DMV and local wants and warrants prior to the applicant being considered for visitation privileges.

(3) Visiting applications shall be denied by the captain/designee if there is reason to believe that visits would jeopardize the safety, security, management or control of the Institution.

(4) Applications may be denied when an extensive or recent history of criminal activity exists, or the visitor has:

(a) transported contraband into or out of a correctional facility;

(b) aided or attempted to aid in an escape from a jail or correctional facility;

(c) been a crime partner of the inmate applicant; or

(d) been under the supervision of UDC for a felony offense.

(5) Visiting application denials may be challenged by visitor applicants through the deputy warden/designee. If the visitor applicant is not satisfied with the deputy warden/designee decision, a second appeal may be made to the warden/designee.

(6) Except for spouses, visitors under 18 years of age shall be accompanied by their parent or legal guardian on the inmate's approved visiting list.

(7) Visitors 16 years of age and older shall present positive identification prior to being permitted to visit.

(8) An individual may not be on more than one inmate's visiting list unless that individual is a member of the immediate family of all inmates involved and is approved as a visitor by the warden/designee.

(9) Adoptions, marriages, or other methods of claiming legal relationships, performed for the purpose of circumventing existing visiting policies shall be considered invalid.

(10) Visitors may have their names removed from any visiting list by sending a written request to the facility visiting staff.

(11) Visitors removed from a visiting list at the written request of an inmate or visitor shall not be reinstated for a 90-day period without prior approval of the facility visiting staff.

(12) Except for members of the inmate's immediate family, only one single adult visitor of the opposite sex shall be permitted to be on the visiting list of any one inmate at any given time.

(13) Divorced visitors shall provide proof of divorce to the facility visiting staff before being allowed to visit an inmate of the opposite sex.

(14) Except for members of the inmate's immediate family, married persons visiting inmates of the opposite sex shall be accompanied by one or more of the following, who shall remain with the visitor for the duration of the visit:

(a) visitor's spouse who is on approved visiting list;

(b) inmate's spouse;

(c) inmate's parent or

(d) other persons approved by the facility visiting staff.

#### **R251-706-6. Visitor Suspensions.**

(1) A visit may be suspended, restricted or revoked for dress code violation, foul and abusive language/conduct, or refusal to comply with DIO policies or procedures, or when necessary to meet safety, security, management or control requirements of the Utah State Prison.

(2) The facility visiting staff may suspend, restrict or revoke visits if the behavior of the visitor or inmate jeopardizes the safety, security, management or control of the institution.

(3) If a visit is suspended, restricted, or revoked the facility visiting staff shall document the action by providing notification of the rules infraction to the inmate, visitor, inmate's OMR, and duty officer. The inmate's OMR may review the

documentation and make decisions regarding visiting to the visiting staff members for modification of the suspension, restriction, or revocation. The inmate may appeal suspensions, restrictions, or revocations by submitting a written request to the warden/designee.

(4) Visiting privileges may be permanently revoked or altered as follows:

(a) visitors who bring drugs into the institution may be permanently barred from visiting; and

(b) inmates guilty of attempting to introduce drugs, weapons or contraband money to the institution through the visiting process may be placed on barrier visits.

(5) Barrier visits may be required for inmates when:

(a) visitors have not been in compliance with visiting regulations on prior occasions and have been warned or required to leave the visiting area;

(b) inmates are classified as Level 1 or 2;

(c) inmates or visitors have been suspected or attempted to introduce contraband into a correctional facility;

(d) inmates have been convicted of disciplinary infraction A13 (Possession, introduction or use of any unauthorized intoxicants, unauthorized drugs or drug paraphernalia, positive urinalysis, breath analysis, blood test, or refusal to submit to the same; or

(e) inmate or visitor behavior, or a recent history of behavior is a threat to the safety and security of the inmates, visitors, staff and the institution.

#### **R251-706-7. Sex Offender Visiting.**

(1) Inmates identified as sex offenders by R and O or visiting staff members may be restricted from visits with minors as follows:

(a) inmates shall not visit with minors identified as the victim of the inmate;

(b) inmates with a documented history of sexual misconduct with a child under the age of 18 years shall not visit with any minor while incarcerated;

(c) court orders or Board of Pardons and Parole orders regarding contact or non-contact between inmates and minors will be enforced;

(d) inmates may appeal visiting restrictions with minors by written appeal to the warden/designee; or

(e) visits between inmates and minors for therapeutic or clinical reasons may be approved on an individual visit basis by the warden/designee.

#### **R251-706-8. Special Visits.**

Requests for special visits or emergency visits from individuals not on an approved visiting list may be approved or denied for reasonable cause by the warden/designee.

#### **KEY: corrections, prisons, inmates, inmate visiting**

**Date of Enactment or Last Substantive Amendment: 2012**

**Authorizing, and Implemented or Interpreted Law: 63G-3-201; 64-13-10; 64-13-17**

**Education, Administration**  
**R277-497**  
**School Grading System**

**NOTICE OF PROPOSED RULE**  
 (New Rule)

DAR FILE NO.: 35875  
 FILED: 02/15/2012

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** The purpose of this rule is to implement a school grading system consistent with Sections 53A-1-1101 through 53A-1-1113.

**SUMMARY OF THE RULE OR CHANGE:** This new rule provides Utah State Board of Education (Board) responsibilities to implement a school grading system with specific elements, provides responsibilities of local education agencies (LEAs), and provides responsibilities of schools.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 53A-1-1113 and Subsection 53A-1-401(3)

**ANTICIPATED COST OR SAVINGS TO:**

- ◆ **THE STATE BUDGET:** There may be costs to the state to develop, implement, and maintain the school grading system. Costs are speculative and will be absorbed by the Board within existing legislative appropriations and budgets.
- ◆ **LOCAL GOVERNMENTS:** There are no anticipated costs or savings to local government. LEAs will provide data which will not result in any measurable costs.
- ◆ **SMALL BUSINESSES:** There are no anticipated costs or savings to small businesses. This rule applies to schools in the public education system and does not affect businesses.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There are no anticipated costs or savings to persons other than small businesses, businesses, or local government entities. The rule affects the state and local government and does not affect individuals.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** There are no compliance costs for affected persons. The Board and LEAs will work together to implement a school grading system to inform parents and the community about school performance.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** I have reviewed this rule and I see no fiscal impact on businesses.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:  
 EDUCATION  
 ADMINISTRATION  
 250 E 500 S  
 SALT LAKE CITY, UT 84111-3272  
 or at the Division of Administrative Rules.

**DIRECT QUESTIONS REGARDING THIS RULE TO:**

- ◆ Carol Lear by phone at 801-538-7835, by FAX at 801-538-7768, or by Internet E-mail at carol.lear@schools.utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 04/02/2012

THIS RULE MAY BECOME EFFECTIVE ON: 04/09/2012

AUTHORIZED BY: Carol Lear, Director, School Law and Legislation

**R277. Education, Administration.**  
**R277-497. School Grading System.**  
**R277-497-1. Definitions.**

- A. "Board" means the Utah State Board of Education.
- B. "LEA" means a local education agency, including local school boards/public school districts, charter schools, and, for purposes of this rule, the Utah Schools for the Deaf and the Blind.

**R277-497-2. Authority and Purpose.**

- A. This rule is authorized by Utah Constitution Article X, Section 3 which vests general control and supervision of public education in the Board, Section 53A-1-1113 which directs the Board to adopt rules to implement a school grading system, and Section 53A-1-401(3) which allows the Board to adopt rules in accordance with its responsibilities.
- B. The purpose of this rule is to provide consistent definitions, standards and procedures for LEAs to report school data through a school grading system.

**R277-497-3. Board Responsibilities.**

- A. Beginning in the 2011-2012 school year, the Board shall implement a school grading system. The school grading system shall include the following elements:
  - (1) A report of school academic performance in language arts, writing, math, and science expressed in a grading system (A,B,C,D,F), for academic achievement including:
    - (a) student assessed proficiency, and
    - (b) student assessed growth.
  - (2) Academic achievement shall be based on:
    - (a) student performance on the Board-approved grade/subject level assessments, and
    - (b) college and career readiness indicators, such as graduation rates.

B. The Board shall use generally accepted standards of validity and reliability to determine the appropriate requirements for letter grades that combine to make up a school report through the school grading system.

C. Beginning with the 2011-2012 school year data, the Board shall:

(1) implement a school grading system that makes data and reports available to parents, educators and the public. The report shall include the elements described in R277-497-3A.

(2) School data and reports shall be available to parents, educators and the public through a public website that facilitates the comparison of public schools based on the school grading system and demographics.

D. The Board-implemented school grading system shall include test scores for students with disabilities consistent with the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. 1401(3).

E. After the 2011-12 school year, the Board shall:

(1) seek and review evaluation information on the calculations and methodologies used to determine academic achievement reports and consider modifications to refine and improve the process and availability of the information.

**R277-497-4. LEA Responsibilities.**

A. LEAs shall provide accurate and timely data as required under R277-484 to allow for the development of the school reports.

B. LEAs shall use the school reports as a communication tool to inform parents and the community about school performance.

C. LEAs shall ensure that the school reports are available for all parents.

**R277-497-5. School Responsibilities.**

A. Schools shall provide data for the school reports as provided in R277-484.

B. Schools shall cooperate with the Board and LEAs to ensure that the school reports are available for all parents.

**KEY: school reports, grading system**

**Date of Enactment or Last Substantive Amendment: 2012**

**Authorizing, and Implemented or Interpreted Law: Art X, Sec 3; 53A-1-1113; 53A-1-401(3)**

Education, Administration  
**R277-521**  
Professional Specialist Licensing

**NOTICE OF PROPOSED RULE**

(Repeal)

DAR FILE NO.: 35876

FILED: 02/15/2012

**RULE ANALYSIS**

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is repealed because it is no longer

necessary for Utah State Office of Education (USOE) employee licensing.

SUMMARY OF THE RULE OR CHANGE: This rule is repealed in its entirety.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 53A-1-401(3)

ANTICIPATED COST OR SAVINGS TO:

◆ THE STATE BUDGET: There are no anticipated costs or savings to the state budget. This rule is repealed because professional specialist licensing is no longer necessary.

◆ LOCAL GOVERNMENTS: There are no anticipated costs or savings to local government. This rule has applied to licensing and employment of professional specialists within the USOE only.

◆ SMALL BUSINESSES: There are no anticipated costs or savings to small businesses. This rule applies to Utah State Office of Education professional specialists and does not affect businesses.

◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: There are no anticipated costs or savings to persons other than small businesses, businesses, or local government entities. Professional specialist licensing is no longer necessary.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs for affected persons. This rule is being repealed in its entirety and compliance costs are not applicable.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: I have reviewed this rule and I see no fiscal impact on businesses.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

EDUCATION

ADMINISTRATION

250 E 500 S

SALT LAKE CITY, UT 84111-3272

or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Carol Lear by phone at 801-538-7835, by FAX at 801-538-7768, or by Internet E-mail at carol.lear@schools.utah.gov

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THIS RULE MAY BECOME EFFECTIVE ON: 04/09/2012

AUTHORIZED BY: Carol Lear, Director, School Law and Legislation

**R277. Education, Administration.****[R277-521. Professional Specialist Licensing:****R277-521-1. Definitions:**

~~\_\_\_\_\_ A. "Accredited college or university" means a school or institution which is sanctioned through a review process by a regional or national accrediting agency recognized by the United States Department of Education.~~

~~\_\_\_\_\_ B. "License" means an authorization issued by the Board which permits the holder to serve in a professional capacity in public school administration.~~

~~\_\_\_\_\_ C. "Board" means the Utah State Board of Education.~~

~~\_\_\_\_\_ D. "USOE" means the Utah State Office of Education.~~

~~\_\_\_\_\_ E. "Volunteer or work experience with the public schools" means regular time spent at specific volunteer assignments such as school board member; regular school district employee; regular classroom volunteer or tutor; or local, regional or state PTA board member under the direction of licensed personnel.~~

**R277-521-2. Authority and Purpose.**

~~\_\_\_\_\_ A. This rule is authorized by Utah Constitution Article X, Section 3 which vests general control and supervision of public education in the Board, Section 53A-6-104(1) which authorizes the Board to issue licenses for educators, and Section 53A-1-401(3) allows the Board to adopt rules in accordance with its responsibilities.~~

~~\_\_\_\_\_ B. The purpose of this rule is to establish standards for licensing of professional specialists and administrators.~~

**R277-521-3. Level 1 License:**

~~\_\_\_\_\_ A. Finance and Statistics: An individual employed at least 20 hours per week in a school district or by the Board may be eligible for this license if the individual satisfies the following:~~

~~\_\_\_\_\_ (1) has a minimum of a Bachelor's degree from an accredited college or university in accounting, finance, business statistics or a related area; and~~

~~\_\_\_\_\_ (2) can demonstrate at least minimal experience in education which may include:~~

~~\_\_\_\_\_ (a) four semester hours or the quarter hour equivalent from an accredited college or university in education-related classes;~~

~~\_\_\_\_\_ (b) a minimum of five hours of USOE or district inservice in education related classes; or~~

~~\_\_\_\_\_ (c) volunteer or work experience or education experience with the public schools.~~

~~\_\_\_\_\_ (3) submits documentation of education courses or related experience, or both, for evaluation and approval by section/department staff.~~

~~\_\_\_\_\_ B. Law and Legislation: An individual employed at least 20 hours per week by a school district or by the Board, may be eligible for the professional specialist license if the individual satisfies the following:~~

~~\_\_\_\_\_ (1) active member of the Utah State Bar; and~~

~~\_\_\_\_\_ (2) can demonstrate at least minimal experience in education which may include:~~

~~\_\_\_\_\_ (a) four semester hours or the quarter hour equivalent from an accredited college or university in education-related classes;~~

~~\_\_\_\_\_ (b) a minimum of five hours of USOE or district inservice in education related classes; or~~

~~\_\_\_\_\_ (c) volunteer or work experience or education experience with the public schools.~~

~~\_\_\_\_\_ (3) submits documentation of education courses or related experience, or both, for evaluation and approval by section/department staff.~~

~~\_\_\_\_\_ C. Evaluation and Assessment: An individual employed at least 20 hours per week by a school district or by the Board, shall be eligible for the professional specialist license if the individual satisfies the following:~~

~~\_\_\_\_\_ (1) has a minimum of a Bachelor's degree from an accredited college or university in psychology, education, or educational psychology; and~~

~~\_\_\_\_\_ (2) can demonstrate at least minimal experience in education which may include:~~

~~\_\_\_\_\_ (a) four semester hours or the quarter hour equivalent from an accredited college or university in education-related classes;~~

~~\_\_\_\_\_ (b) a minimum of five hours of USOE or district inservice in education related classes; or~~

~~\_\_\_\_\_ (c) volunteer or work experience or education experience with the public schools.~~

~~\_\_\_\_\_ (3) submits documentation of education courses or related experience, or both, for evaluation and approval by section/department staff.~~

**R277-521-4. Level 2 License:**

~~\_\_\_\_\_ A. Finance and Statistics: An individual employed at least 20 hours per week in a school district or by the Board shall be eligible for this license if the individual satisfies all applicable conditions under R277-521-3A and the following:~~

~~\_\_\_\_\_ (1) has completed a Masters degree in accounting, finance, business statistics or a related area, or CPA (certified public accountant) from an accredited college or university; and~~

~~\_\_\_\_\_ (2) provides documentation of significant educational experience such as:~~

~~\_\_\_\_\_ (a) 10-12 hours education-related or supervisor-approved course work; or~~

~~\_\_\_\_\_ (b) 20 hours USOE or district inservice in education-related classes; or~~

~~\_\_\_\_\_ (3) provides documentation of significant volunteer or work experience as demonstrated by increased levels of responsibilities as defined under R277-521-1D or education experience.~~

~~\_\_\_\_\_ B. Law and Legislation: An individual employed at least 20 hours per week in a school district or by the Board shall be eligible for this license if the individual satisfies all applicable conditions under R277-521-3B and the following:~~

~~\_\_\_\_\_ (1) has completed 20 semester hours or equivalent quarter hours from an accredited college or university in:~~

~~\_\_\_\_\_ (a) educational administration; or~~

~~\_\_\_\_\_ (b) educational instruction; or~~

~~\_\_\_\_\_ (c) supervisor-approved course work; or~~

~~\_\_\_\_\_ (2) provides documentation of significant educational experience such as:~~

~~\_\_\_\_\_ (a) 10-12 hours education-related or supervisor-approved course work; or~~

~~\_\_\_\_\_ (b) 20 hours USOE or district inservice in education-related classes; or~~

~~(3) provides documentation of significant volunteer or work experience as demonstrated by increased levels of responsibilities as outlined under R277-521-1D.~~

~~C. Evaluation and Assessment: An individual employed at least 20 hours per week in a school district or by the Board shall be eligible for this license if the individual satisfies all applicable conditions under R277-521-3C and the following:~~

~~(1) has completed 20 semester hours or equivalent quarter hours beyond the Bachelor's degree from an accredited college or university in:~~

~~(a) educational psychology; or~~

~~(b) supervisor-approved course work; and~~

~~(2) provides documentation of significant educational experience such as:~~

~~(a) 10-12 hours education-related or supervisor-approved course work; or~~

~~(b) 20 hours USOE or district inservice in education-related classes; or~~

~~(3) significant volunteer or work experience as demonstrated by increased levels of responsibilities as outlined under R277-521-1D.~~

#### **R277-521-5. Level 3 License.**

~~A. Finance and Statistics: An individual employed at least 20 hours per week in a school district or by the Board shall be eligible for this license if the individual satisfies all applicable conditions under R277-521-3A and R277-521-4A and the following:~~

~~(1) has completed a Doctorate or Masters degree in accounting, finance, business statistics or a related area, and a CPA consistent with Section 53A-6-103(9)(d); and~~

~~(2) has earned a teacher, counselor, or administrative license.~~

~~B. School Law and Legislation: An individual employed at least 20 hours per week in a school district or by the Board shall be eligible for this license if the individual satisfies all applicable conditions under R277-521-3B and R277-521-4B and the following:~~

~~(1) has completed a Doctorate other than law consistent with Section 53A-6-103(9)(d) and at least a Masters degree in a USOE-approved area of study; and~~

~~(2) has earned a teacher, counselor, or administrative license.~~

~~C. Evaluation and Assessment: An individual employed at least 20 hours per week in a school district or by the Board shall be eligible for this license if the individual satisfies all applicable conditions under R277-521-3C and R277-521-4C and the following:~~

~~(1) has completed a Doctorate consistent with Section 53A-6-103(9)(d); and~~

~~(2) has earned a teacher, counselor, or administrative license.~~

#### **R277-521-6. Other Requirements.**

~~A. An applicant for licensing under R277-521 shall satisfy the criminal background check requirements under Section 53A-6-401.~~

~~B. An applicant for licensing under R277-521 shall satisfy professional development requirements under Section 53A-6-104(2) and R277-501.~~

~~KEY: education, license~~

~~Date of Enactment or Last Substantive Amendment: September 4, 2002~~

~~Notice of Continuation: September 3, 2009~~

~~Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53A-6-104(1); 53A-1-401(3)]~~

## Education, Administration R277-600-7 Alternative Transportation

### NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 35877

FILED: 02/15/2012

### RULE ANALYSIS

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** This rule is amended to provide language for adequate reimbursement to parents in lieu of school district transportation for mileage and room and board for a student who resides more than 60 miles from the student's assigned school.

**SUMMARY OF THE RULE OR CHANGE:** The changes to the rule provide language in Section R277-600-7 for increased reimbursement to parents in lieu of school district transportation for mileage and room and board for a student who resides more than 60 miles from the student's assigned school.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Subsection 53A-1-402(1)(d)

**ANTICIPATED COST OR SAVINGS TO:**

♦ **THE STATE BUDGET:** There are no anticipated costs to the state budget. The state will provide funding to school districts to reimburse parents adequately for mileage and room and board for students who live more than 60 miles from the student's assigned school. This rule affects a very small number of students.

♦ **LOCAL GOVERNMENTS:** There are no anticipated costs to local government. School districts will receive state transportation funding to reimburse parents adequately for mileage and room and board for students who live more than 60 miles from the student's assigned school. This rule affects a very small number of students.

♦ **SMALL BUSINESSES:** There are no anticipated costs or savings to small businesses. This rule applies to public education and does not affect businesses.

◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: There will be savings to parents because they will be reimbursed adequately and appropriately for mileage and room and board for students who live more than 60 miles from the student's assigned school.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs for affected persons. The changes to this rule provide for adequate reimbursement to parents for transportation and room and board costs in which there is no compliance.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: I have reviewed this rule and I see no fiscal impact on businesses.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:  
 EDUCATION  
 ADMINISTRATION  
 250 E 500 S  
 SALT LAKE CITY, UT 84111-3272  
 or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:  
 ◆ Carol Lear by phone at 801-538-7835, by FAX at 801-538-7768, or by Internet E-mail at carol.lear@schools.utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 04/02/2012

THIS RULE MAY BECOME EFFECTIVE ON: 04/09/2012

AUTHORIZED BY: Carol Lear, Director, School Law and Legislation

**R277. Education, Administration.  
 R277-600. Student Transportation Standards and Procedures.  
 R277-600-7. Alternative Transportation.**

Bus routes that involve a large number of deadhead miles are analyzed for reduction or to determine if an alternative method of transporting students is more efficient. Approved alternatives include the following:

A. The costs incurred in transporting eligible pupils in a school district multipurpose passenger vehicle (M.P.V.) are approved costs as long as the costs demonstrate efficiency.

B(1) The costs incurred in paying eligible students an allowance in lieu of school district-supplied transportation are an approved cost. A student is reimbursed for the mileage to the bus stop or school, whichever is closer, nearest the student's home. The allowance shall not be less than the standard mileage rate deduction permitted by the United States Internal Revenue Service for charitable contributions, nor greater than the reimbursement allowance permitted by the Utah Department of Administrative

Services for use of privately owned vehicles set forth in the Utah Travel Regulations;

(2) ~~[a student allowance is made to the student and not to the parent for transporting one's own child or other students. This does not restrict parents from pooling resources]~~ a student mileage allowance is made to only one student per family for each trip that is necessary for all the students within a family to attend school. If siblings are on different school schedules or ride buses that are on significantly different schedules, multiple students within a family may claim and be paid for student mileage allowances;

(3) if a student or the student's parent is unable to provide private transportation, with prior state approval, an amount equivalent to the student allowance is payable to the school district to help pay the costs of school district transportation;

(4) the student's mileage shall be measured and certified in school district records. The student's ADA, as entered in school records, is used to determine the student's attendance.

C(1) The cost incurred in providing a subsistence allowance is an approved cost. ~~[A parent is reimbursed for a student's room and board when a student lives at a site nearer to the assigned school, if the student does not have a school facility or bus service available within approximately 60 miles of the student's residence.]~~ If a student lives more than 60 miles on well-maintained roads from the student's assigned school, a parent may be reimbursed for the student's room and board if the student relocates temporarily to reside in close proximity to the student's assigned school. Payment shall not exceed the Substitute Care Rate for Family Services for the current fiscal year. Adjustments for changes made in the rate during the year are included in the allowance. In addition to the reimbursement for room and board, the subsistence allowance includes the costs of ~~[two]~~ 18 round trips per year.

(2) A subsistence allowance is not applicable to a parent who maintains a separate home during the school year for the convenience of the family. A parent's residence during the school year is the residence of the child.

D. Contracting or leasing for pupil transportation

(1) The cost incurred in engaging in a contract or leasing for transportation is an approved cost at the prorated amount available to school districts.

(2) Reimbursements for school districts using a leasing arrangement are determined in accordance with the comparable cost for the school district to operate its own transportation.

(3) Under a contract or lease, the school district's transportation administrator's time shall not exceed one percent of the commercial contract cost.

(4) Eligible student counts, bus route mileage, bus route minutes, and bus inventory data are required as if the school district operated its own transportation.

**KEY: school buses, school transportation**  
**Date of Enactment or Last Substantive Amendment:**  
~~[December 8, 2011]~~ **2012**  
**Notice of Continuation: January 8, 2008**  
**Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53A-1-402(1)(d); 53A-17a-126 and 127**

Education, Administration  
**R277-615**  
 Standards and Procedures for Student  
 Searches

250 E 500 S  
 SALT LAKE CITY, UT 84111-3272  
 or at the Division of Administrative Rules.

**NOTICE OF PROPOSED RULE**

(New Rule)  
 DAR FILE NO.: 35878  
 FILED: 02/15/2012

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** The purpose of this new rule is to direct local education agencies (LEAs) to develop policies and procedures for searching students.

**SUMMARY OF THE RULE OR CHANGE:** This new rule provides responsibilities of the State Board of Education and LEA responsibilities.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 53A-11-1305 and Subsection 53A-1-401(3)

**ANTICIPATED COST OR SAVINGS TO:**

- ◆ **THE STATE BUDGET:** There are no anticipated costs or savings to the state budget. This new rule directs LEAs to adopt policies regarding student searches which do not result in a cost to the state.
- ◆ **LOCAL GOVERNMENTS:** There may be minimal costs to local government. LEAs must adopt policies regarding student searches which may result in minimal administrative costs.
- ◆ **SMALL BUSINESSES:** There are no anticipated costs or savings to small businesses. This rule applies to public education and does not affect businesses.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There are no anticipated costs or savings to persons other than small businesses, businesses, or local government entities. This rule applies to LEAs in developing policies and procedures for student searches.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** There are no compliance costs or affected persons. LEAs will develop policies and procedures regarding student searches.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** I have reviewed this rule and I see no fiscal impact on businesses.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED,  
 DURING REGULAR BUSINESS HOURS, AT:  
 EDUCATION  
 ADMINISTRATION

**DIRECT QUESTIONS REGARDING THIS RULE TO:**

◆ Carol Lear by phone at 801-538-7835, by FAX at 801-538-7768, or by Internet E-mail at carol.lear@schools.utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 04/02/2012

THIS RULE MAY BECOME EFFECTIVE ON: 04/09/2012

AUTHORIZED BY: Carol Lear, Director, School Law and Legislation

**R277. Education, Administration.**

**R277-615. Standards and Procedures for Student Searches.**  
**R277-615-1. Definitions.**

- A. "Board" means the Utah State Board of Education.
- B. "Controlled substances" means substances identified under Sections 58-37-2, 58-37a-3 and 58-37b-2.
- C. "Law enforcement authorities" means officers working under the direct supervision and in the employment of police or law enforcement, as opposed to under the supervision of a public education agency. Law enforcement authorities have received police officer training and are acting in that capacity.
- D. "LEA" means a local education agency, including local school boards/public school districts, charter schools, and the Utah Schools for the Deaf and the Blind.
- E. "Reasonable suspicion" means a particularized and objective basis, supported by objective and articulable facts leading the searcher to believe that there is a moderate chance of finding evidence of wrongdoing. Reasonableness considers the totality of the circumstances including such factors as the scope and manner of the intrusion, the justification for the search, the nature of the infraction, the place where the search is conducted, the student's age, history and school record, the prevalence and seriousness of the problem in the school, the exigency requiring the search without delay, the reliability of the information used as a justification for the search, and the school official's prior experience with the student. The search shall be reasonable both in inception of the search and the scope of the search.
- F. "School official" means a school superintendent, associate superintendent, school district specialist, school principal or assistant principal or charter school employee who is a director, principal, headmaster, or assistant administrator.
- G. "Weapon" means any item capable of causing death or serious bodily injury or a facsimile or representation of the item.

**R277-615-2. Authority and Purpose.**

- A. This rule is authorized by Utah Constitution Article X, Section 3 which vests general control and supervision of public education in the Board, by Section 53A-11-1305 that directs the Board and LEAs to adopt rules to protect students against unreasonable and excessive intrusion of personal rights and privacy on school property or at school-sponsored activities, and by Section

53A-1-401(3) which allows the Board to adopt rules in accordance with its responsibilities.

B. The purpose of this rule is to direct LEAs to adopt rules or policies or both to protect student rights with procedures and provisions that balance students' rights and privacy with the responsibility of school officials for the safety and protection of students and adults while on school property or at school-sponsored events.

**R277-615-3. Board Responsibilities.**

A. The Board shall provide consistent definitions for LEAs to include in policies.

B. The Board shall develop a model policy as guidance for LEAs.

C. The Board shall include an assurance for LEAs regarding the student search policy required under Section 53A-11-1305 in the Utah Consolidated Report, beginning with the 2012-13 school year.

**R277-615-4. LEA Responsibilities.**

A. LEAs shall develop a policy for searching students for controlled substances as required under Utah law and for weapons before June 30, 2012.

B. LEAs shall include appropriate interested parties in the development of student search policies, including parents, school employees, and licensed school employees.

C. LEA policies shall ensure protection of individual student rights against excessive and unreasonable intrusion.

D. LEAs shall make policies available to parents electronically and in materials provided to parents and students upon enrollment as soon as reasonably possible following adoption of policies.

E. LEAs shall provide adequate training to appropriate classes of employees for fair and consistent implementation of student search policies.

**KEY: students, searches**

**Date of Enactment or Last Substantive Amendment: 2012**

**Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53A-11-1305; 53A-1-401(3)**

**Environmental Quality, Air Quality  
R307-107**

**General Requirement: Unavoidable  
Breakdown**

**NOTICE OF PROPOSED RULE**

(Repeal and Reenact)

DAR FILE NO.: 35865

FILED: 02/09/2012

**RULE ANALYSIS**

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: On 04/18/2011, the Environmental Protection Agency (EPA) published a final rule Finding of Substantial

Inadequacy of Implementation Plan; Call for Utah State Implementation Plan Revision 76 FR 21639. According to the EPA, Utah's unavoidable breakdown rule "undermines EPA's, Utah's, and citizens' ability to enforce emission limitations that have been relied on to ensure attainment or maintenance of the NAAQS or meet other CAA requirements. EPA is requiring that the State revise the SIP to remove Rule R307-107 or correct its deficiencies and submit the revised SIP to EPA within 18 months of the effective date of this final rule." Id. EPA has given Utah two options to avoid possible sanctions: withdraw the rule from the SIP or revise the rule to address the deficiencies by 11/18/2011. The outcome of a stakeholder process to develop the current proposed rule is called an Enforcement Discretion approach. Other stakeholders supported an approach called an Affirmative Defense. The Utah Air Quality Board is proposing to repeal the current Rule R307-107, and replace it with an Enforcement Discretion rule, a copy of which is submitted with this notice. As part of this rulemaking, the Board decided it would solicit public comment on an alternative Affirmative Defense rule that is approvable by EPA. EPA has approved in part, and denied in part, an Affirmative Defense rule submitted by the State of Colorado. See link to EPA's ruling on the Colorado Affirmative Defense: <https://www.federalregister.gov/articles/2006/02/22/06-1567/approval-and-disapproval-and-promulgation-of-air-quality-implementation-plans-colorado-affirmative>. See link to the Colorado rule <http://www.cdphe.state.co.us/regulations/airregs/5CCR1001-2.pdf>. The Board is also soliciting comments on an option to withdraw the existing unavoidable breaking rule from the State Implementation Plan. Comments to DAQ may be made through the DAQ website at <http://www.airquality.utah.gov/Public-Interest/Public-Commen-Hearings/Pubrule.htm> or by post mailing: Joel Karmazyn, Division of Air Quality, PO Box 144820, Salt Lake City, UT 84114-4820.

SUMMARY OF THE RULE OR CHANGE: Substantive changes to the current rule: In Section R307-107-1, Application, excess emissions from breakdowns are not currently deemed a violation. The amendment excludes this provision. Also in Section R307-107-1, Application, predictable excess emissions authorization is being eliminated. In Section R307-107-2, Reporting, the breakdown threshold of two hours before required reporting is being eliminated. All excess emissions from a breakdown shall be reported. Also in Section R307-107-2, Reporting, the requirement to file an incident report is being modified from 3 to 18 hours after the beginning of the breakdown to within 24 hours. Also in Section R307-107-2, Reporting, the incident report filing requirement has been extended from 7 days to 14. Also in Section R307-107-2, Reporting, the amendment removes the violation determination by the executive secretary but retains enforcement discretion. Section R307-107-3, Penalties, is deleted. In Section R307-107-4, Procedures is being replaced with the amended Section R307-107-2. The amended section more precisely specifies the owner/operator responsibilities regarding response to an incident and subsequent reporting. Section R307-107-5, Violations, is deleted. Section R307-107-6, Emissions

Standards, is deleted. Section R307-107-3, Enforcement Discretion, is a new section describing the executive secretary discretion to pursue enforcement action pending review of the incident report.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 19-2-104

ANTICIPATED COST OR SAVINGS TO:

- ◆ THE STATE BUDGET: None--Does not impact state budget because this rule is already in effect.
- ◆ LOCAL GOVERNMENTS: None--Because this rule is already in effect.
- ◆ SMALL BUSINESSES: Not expected--Rule predominately applies to large sources.
- ◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: Some additional report filing may be necessary for the Enforcement Discretion rule due to removal of 2 hour applicability. Since the rule applies to only excess emissions, additional filings should not be excessive.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Some additional report filing may be necessary for the Enforcement Discretion rule due to removal of 2 hour applicability. Since the rule applies to only excess emissions, additional filings should not be excessive.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Minimal increase from some potential additional reporting.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:  
 ENVIRONMENTAL QUALITY  
 AIR QUALITY  
 FOURTH FLOOR  
 195 N 1950 W  
 SALT LAKE CITY, UT 84116-3085  
 or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

- ◆ Joel Karmazyn by phone at 801-536-4423, by FAX at 801-536-4099, or by Internet E-mail at [jkarmazyn@utah.gov](mailto:jkarmazyn@utah.gov)

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 04/02/2012

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE:

- ◆ 03/20/2012 09:00 AM, Multi-agency State Office Building, 195 N 1950 W, Conference Room No. 4100, Salt Lake City, UT

THIS RULE MAY BECOME EFFECTIVE ON: 06/06/2012

AUTHORIZED BY: Bryce Bird, Director

### **R307. Environmental Quality, Air Quality.**

#### **R307-107. General Requirements: Unavoidable Breakdown.**

##### **[R307-107-1. Application.**

~~R307-107 applies to all regulated pollutants including those for which there are National Ambient Air Quality Standards. Except as otherwise provided in R307-107, emissions resulting from an unavoidable breakdown will not be deemed a violation of these regulations. If excess emissions are predictable, they must be authorized under the variance procedure in R307-102-4. Breakdowns that are caused entirely or in part by poor maintenance, careless operation, or any other preventable upset condition or preventable equipment breakdown shall not be considered unavoidable breakdown.~~

##### **R307-107-2. Reporting.**

~~A breakdown for any period longer than 2 hours must be reported to the executive secretary within 3 hours of the beginning of the breakdown if reasonable, but in no case longer than 18 hours after the beginning of the breakdown. During times other than normal office hours, breakdowns for any period longer than 2 hours shall be initially reported to the Environmental Health Emergency Response Coordinator, Telephone (801) 536-4123. Within 7 calendar days of the beginning of any breakdown of longer than 2 hours, a written report shall be submitted to the executive secretary which shall include the cause and nature of the event, estimated quantity of pollutant (total and excess), time of emissions and steps taken to control the emissions and to prevent recurrence. The submittal of such information shall be used by the executive secretary in determining whether a violation has occurred and/or the need of further enforcement action.~~

##### **R307-107-3. Penalties.**

~~Failure to comply with the reporting procedures of R307-107-2 will constitute a violation of these regulations.~~

##### **R307-107-4. Procedures.**

~~The owner or operator of an installation suffering an unavoidable breakdown shall assure that emission limitations and visible emission limitations are exceeded for only as short a period of time as reasonable. The owner or operator shall take all reasonable measures which may include but are not limited to the immediate curtailment of production, operations, or activities at all installations of the source if necessary to limit the total aggregate emissions from the source to no greater than the aggregate allowable emissions averaged over the periods provided in the source's approval orders or R307. In the event that production, operations or activities cannot be curtailed so as to so limit the total aggregate emissions without jeopardizing equipment or safety or measures taken would result in even greater excess emissions, the owner or operator of the source shall use the most rapid, reasonable procedure to reduce emissions. The owner or operator of any installation subject to a SIP emission limitation pursuant to these rules shall be deemed to have complied with the provisions of R307-107 if the emission limitation has not been exceeded.~~

##### **R307-107-5. Violation.**

~~Failure to comply with curtailment actions required by R307-107-4 will constitute a violation of R307-107.~~

**R307-107-6. Emissions Standards.**

~~Other provisions of R307 may require more stringent controls than listed herein, in which case those requirements must be met. ]~~

**R307-107-1. Applicability and Timing.**

~~(1) The owner or operator of a source shall report breakdowns to the executive secretary within 24 hours of the incident via telephone, electronic mail, fax, or other similar method.~~

~~(2) A detailed written description of the circumstance of the incident as described in R307-107-2, including a corrective program directed at preventing future such incidents, shall be submitted within 14 days of the onset of the incident.~~

~~(a) The executive secretary may extend the 14 day time period for submission of the incident report for cause.~~

**R307-107-2. Reporting.**

~~(1) The unavoidable breakdown incident report shall include the cause and nature of the event, estimated quantity of emissions (total and excess), time of emissions and any relevant evidence, including, but not limited to, evidence that:~~

~~(a) There was an equipment malfunction beyond the reasonable control of the owner or operator;~~

~~(b) The excess emissions could not have been avoided by better operation, maintenance or improved design of the malfunctioning component;~~

~~(c) To the maximum extent practicable, the source maintained and operated the air pollution control equipment and process equipment in a manner consistent with good practice for minimizing emissions, including minimizing any bypass emissions;~~

~~(d) Any necessary repairs were made as quickly as practicable, using off-shift labor and overtime as needed and as possible;~~

~~(e) All practicable steps were taken to minimize the potential impact of the excess emissions on ambient air quality; and~~

~~(f) The excess emissions are not part of a recurring pattern that may have been caused by inadequate operation or maintenance, or inadequate design of the malfunctioning component.~~

~~(2) The burden of proof is on the owner or operator of the source to provide sufficient information to demonstrate an unavoidable breakdown occurred.~~

**R307-107-3. Enforcement Discretion.**

~~The executive secretary will evaluate, on a case-by-case basis, the information submitted in R307-107-1 and 2 to determine whether to pursue enforcement action. The executive secretary may elect not to pursue enforcement action after considering whether excess emissions resulted from an unavoidable breakdown.~~

**KEY:** air pollution, unavoidable breakdown[\*], excess emissions[\*]

**Date of Enactment or Last Substantive Amendment:** [September 15, 1998]2012

**Notice of Continuation:** September 4, 2008

**Authorizing, and Implemented or Interpreted Law:** 19-2-104

## Environmental Quality, Air Quality R307-840 Lead-Based Paint Program Purpose, Applicability, and Definitions

### NOTICE OF PROPOSED RULE (Amendment)

DAR FILE NO.: 35857  
FILED: 02/07/2012

### RULE ANALYSIS

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** EPA has made significant changes to its lead-based paint rules, and the Air Quality Board is implementing those changes into this rule to conform with current EPA rules and retain program delegation from the EPA.

**SUMMARY OF THE RULE OR CHANGE:** This proposed amendment to Rule R307-840 clarifies that the definitions found in Rule R307-840 apply to Rules R307-840, R307-841 and R307-842. The proposed amendment adds definitions for "Certified firm," "Painted surfaces," "Renovator," and "Vertical containment." The proposed amendment also adds language that states that individuals or firms wishing to deviate from the certification, notification, work practice, or other requirements of Rules R307-840, R307-841, or R307-842 can only do so after obtaining written approval from the executive secretary. (DAR NOTE: The proposed amendment to Rule R307-841 is under DAR No. 35858 and the proposed amendment to Rule R307-842 is under DAR No. 35859 in this issue, March 1, 2012, of the Bulletin.)

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Subsection 19-2-104(1)(i)

#### ANTICIPATED COST OR SAVINGS TO:

♦ **THE STATE BUDGET:** Because no new requirements are created that are not already required by the federal government, no costs or savings are anticipated for the state budget.

♦ **LOCAL GOVERNMENTS:** Because no new requirements are created that are not already required by the federal government, no costs or savings are anticipated for local government.

♦ **SMALL BUSINESSES:** Because no new requirements are created that are not already required by the federal government, no costs or savings are anticipated for small business.

♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** Because no new requirements are created that are not already required by the federal government, no costs or savings are anticipated for persons other than small businesses, businesses, or local government entities.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:**  
Because no new requirements are created that are not already required by the federal government, no costs or savings are anticipated for affected persons.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:**  
Because no new requirements are created that are not already required by the federal government, no costs or savings are anticipated for businesses.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

ENVIRONMENTAL QUALITY  
AIR QUALITY  
FOURTH FLOOR  
195 N 1950 W  
SALT LAKE CITY, UT 84116-3085  
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Mark Berger by phone at 801-536-4000, by FAX at 801-536-0085, or by Internet E-mail at mberger@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 04/02/2012

THIS RULE MAY BECOME EFFECTIVE ON: 05/03/2012

AUTHORIZED BY: Bryce Bird, Director

### **R307. Environmental Quality, Air Quality.**

#### **R307-840. Lead-Based Paint Program Purpose, Applicability, and Definitions.**

##### **R307-840-1. Purpose and Applicability.**

(1) Rule R307-840, R307-841, and R307-842 establish procedures and requirements for the accreditation of training programs for lead-based paint activities and renovations, procedures and requirements for the certification of individuals and firms engaged in lead-based paint activities and renovations, and work practice standards for performing such activities. These rules also require that, except as outlined in R307-840-1(2), all lead-based paint activities and renovations, as defined in these rules, must be performed by certified individuals and firms.

(2) R307-840, R307-841, and R307-842 apply to all individuals~~[, agencies,]~~ and firms who are engaged in lead-based paint activities and renovations as defined in R307-840-2, except ~~[for]~~ persons who perform these activities within residential dwellings that they own, unless the residential dwelling is occupied by a person or persons other than the owner or the owner's immediate family while these activities are being performed, or a child residing in the building has been identified as having an elevated blood lead level.

(3) R307-840, R307-841, and R307-842 identify lead-based paint hazards. The standards for lead-based paint hazards apply to target housing and child-occupied facilities.

(4) R307-840, R307-841, and R307-842 do not require the owner of the property or properties subject to these rules to evaluate the property or properties for the presence of lead-based paint hazards or take any action to control these conditions if one or more of them is identified.

(5) While R307-840, R307-841, and R307-842 establish specific requirements for performing lead-based paint activities and renovations should they be undertaken, these rules do not require that the owner or occupant undertake any particular lead-based paint activity or renovation.

(6) Individuals or firms wishing to deviate from the certification, notification, work practice, or other requirements of R307-840, R307-841, and/or R307-842 may do so only after requesting and obtaining written approval from the executive secretary

~~[The following definitions apply to R307-840, R307-841, and R307-842 in addition to the definitions found in R307-101-2.]~~

##### **R307-840-2. Definitions.**

The following definitions apply to R307-840, R307-841, and R307-842, in addition to the definitions found in R307-101-2.

"Abatement" means any measure or set of measures designed to permanently eliminate lead-based paint hazards. Abatement includes, but is not limited to:

(1) The removal of paint and dust, the permanent enclosure or encapsulation of lead-based paint, the replacement of painted surfaces or fixtures, or the removal or permanent covering of soil, when lead-based paint hazards are present in such paint, dust, or soil; and

(2) All preparation, cleanup, disposal, and post-abatement clearance testing activities associated with such measures.

(3) Specifically, abatement includes, but is not limited to:

(a) Projects for which there is a written contract or other documentation, which provides that an individual or firm will be conducting activities in or to a residential dwelling or child-occupied facility that:

(i) Shall result in the permanent elimination of lead-based paint hazards~~[,]~~ or

(ii) Are designed to permanently eliminate lead-based paint hazards and are described in paragraphs (1) and (2) of this definition~~[,]~~

(b) Projects resulting in the permanent elimination of lead-based paint hazards, conducted by firms or individuals certified in accordance with R307-842-2, unless such projects are covered by paragraph (4) of this definition;

(c) Projects resulting in the permanent elimination of lead-based paint hazards, conducted by firms or individuals who, through their company name or promotional literature, represent, advertise, or hold themselves out to be in the business of performing lead-based paint activities as identified and defined by this section, unless such projects are covered by paragraph (4) of this definition; or

(d) Projects resulting in the permanent elimination of lead-based paint hazards that are conducted in response to State of Utah or local abatement orders.

(4) Abatement does not include renovation, remodeling, landscaping or other activities, when such activities are not designed to permanently eliminate lead-based paint hazards, but,

instead, are designed to repair, restore, or remodel a given structure or dwelling, even though these activities may incidentally result in a reduction or elimination of lead-based paint hazards. Furthermore, abatement does not include interim controls, operations and maintenance activities, or other measures and activities designed to temporarily, but not permanently, reduce lead-based paint hazards.

"Accredited Training Program" means a training program that has been accredited by the [E]xecutive [S]ecretary pursuant to R307-842-1 to provide training for individuals engaged in lead-based paint activities.

"Adequate Quality Control" means a plan or design which ensures the authenticity, integrity, and accuracy of samples, including dust, soil, and paint chip or paint film samples. Adequate quality control also includes provisions for representative sampling.

"Arithmetic Mean" means the algebraic sum of data values divided by the number of data values (e.g., the sum of the concentration of lead in several soil samples divided by the number of samples).

"Business Day" means Monday through Friday with the exception of [F]ederal and State of Utah holidays.

"Certificate of Mailing" means Certificate of Mailing as defined by the United States Postal Service.

"Certified Abatement Worker" means an individual who has been trained by an accredited training program and certified by the [E]xecutive [S]ecretary pursuant to R307-842-2 to perform abatements.

"Certified Dust Sampling Technician" means an individual who has been trained by an accredited training program and certified by the [E]xecutive [S]ecretary pursuant to R307-841-8(1) and R307-842-2 to collect dust samples.

"Certified Firm" means a company, partnership, corporation, sole proprietorship or individual doing business, association, or other business entity; a federal, state, tribal, or local government agency; or a nonprofit organization that performs lead-based paint activities, renovations, or dust sampling to which the executive secretary has issued a certificate of approval pursuant to R307-842-2(5).

"Certified Inspector" means an individual who has been trained by an accredited training program and certified by the [E]xecutive [S]ecretary pursuant to R307-842-2[+] to conduct inspections. A certified inspector also samples for the presence of lead in dust and soil for the purposes of abatement clearance testing.

"Certified Project Designer" means an individual who has been trained by an accredited training program and certified by the [E]xecutive [S]ecretary pursuant to R307-842-2 to prepare abatement project designs, occupant protection plans, and abatement reports.

"Certified Renovator" means an individual who has been trained by an accredited training program and certified by the [E]xecutive [S]ecretary pursuant to R307-841-8(1) and R307-842-2 to conduct renovations.

"Certified Risk Assessor" means an individual who has been trained by an accredited training program and certified by the [E]xecutive [S]ecretary pursuant to R307-842-2 to conduct risk assessments. A risk assessor also samples for the presence of lead in dust and soil for the purposes of abatement clearance testing.

"Certified Supervisor" means an individual who has been trained by an accredited training program and certified by the [E]xecutive [S]ecretary pursuant to R307-842-2 to supervise and

conduct abatements, and to prepare occupant protection plans and abatement reports.

"Chewable Surface" means an interior or exterior surface painted with lead-based paint that a young child can mouth or chew. A chewable surface is the same as an "accessible surface" as defined in 42 U.S.C. 4851b(2). Hard metal substrates and other materials that can not be dented by the bite of a young child are not considered chewable.

"Child-Occupied Facility" means a building, or portion of a building, constructed prior to 1978, visited regularly by the same child, under 6 years of age, on at least two different days within any week (Sunday through Saturday period), provided that each day's visit lasts at least 3 hours and the combined weekly visits last at least 6 hours, and the combined annual visits last at least 60 hours. Child-occupied facilities may include, but are not limited to, day care centers, preschools[,] and kindergarten classrooms. Child-occupied facilities may be located in target housing or in public or commercial buildings. With respect to common areas in public or commercial buildings that contain child-occupied facilities, the child-occupied facility encompasses only those common areas that are routinely used by children under age 6, such as restrooms and cafeterias. Common areas that children under age 6 only pass through, such as hallways, stairways, and garages are not included. In addition, with respect to exteriors of public or commercial buildings that contain child-occupied facilities, the child-occupied facility encompasses only the exterior sides of the building that are immediately adjacent to the child-occupied facility or the common areas routinely used by children under age 6.

"Cleaning Verification Card" means a card developed and distributed, or otherwise approved, by EPA for the purpose of determining, through comparison of wet and dry disposable cleaning cloths with the card, whether post-renovation cleaning has been properly completed.

"Clearance Levels" are values that indicate the maximum amount of lead permitted in dust on a surface following completion of an abatement activity.

"Common Area" means a portion of a building that is generally accessible to all occupants. Such an area may include, but is not limited to, hallways, stairways, laundry and recreational rooms, playgrounds, community centers, garages, and boundary fences.

"Common Area Group" means a group of common areas that are similar in design, construction, and function. Common area groups include, but are not limited to hallways, stairways, and laundry rooms.

"Component or Building Component" means specific design or structural elements or fixtures of a building or[-] residential dwelling, ~~or child-occupied facility~~ that are distinguished from each other by form, function, and location. These include, but are not limited to, interior components such as ceilings, crown molding, walls, chair rails, doors, door trim, floors, fireplaces, radiators and other heating units, shelves, shelf supports, stair treads, stair risers, stair stringers, newel posts, railing caps, balustrades, windows and trim (including sashes, window heads, jamba, sills or stools and troughs), built in cabinets, columns, beams, bathroom vanities, counter tops, and air conditioners, and exterior components such as painted roofing, chimneys, flashing, gutters and downspouts, ceilings, soffits, fascias, rake boards, cornerboards, bulkheads, doors and door trim, fences, floors, joists,

lattice work, railings and railing caps, siding, handrails, stair risers and treads, stair stringers, columns, balustrades, window sills or stools and troughs, casings, sashes and wells, and air conditioners.

"Concentration" means the relative content of a specific substance contained within a larger mass, such as the amount of lead (in micrograms per gram or parts per million by weight) in a sample of dust or soil.

"Containment" means a process to protect workers and the environment by controlling exposures to the lead-contaminated dust and debris created during an abatement.

"Course [a]Agenda" means an outline of the key topics to be covered during a training course, including the time allotted to teach each topic.

"Course Test" means an evaluation of the overall effectiveness of the training which shall test the trainees' knowledge and retention of the topics covered during the course.

"Course Test Blue Print" means written documentation identifying the proportion of course test questions devoted to each major topic in the course curriculum.

"Deteriorated Paint" means any interior or exterior paint or other coating that is flaking, peeling, chipping, chalking, or cracking, or any other paint or coating located on an interior or exterior surface or fixture that is otherwise damaged or separated from the substrate.

"Discipline" means one of the specific types or categories of lead-based paint activities identified in this rule for which individuals may receive training from accredited programs and become certified by the [E]xecutive [S]ecretary. Disciplines include Abatement Worker, Dust Sampling Technician, Inspector, Project Designer, Renovator, Risk Assessor, and Supervisor.

"Distinct Painting History" means the application history, as indicated by its visual appearance or a record of application, over time, of paint or other surface coatings to a component or room.

"Documented Methodologies" are methods or protocols used to sample for the presence of lead in paint, dust, and soil.

"Dripline" means the area within 3 feet surrounding the perimeter of the building.

"Dry Disposable Cleaning Cloth" means a commercially available dry, electrostatically charged, white disposable cloth designed to be used for cleaning hard surfaces such as uncarpeted floors or counter tops.

"Dust-lead hazard" means surface dust in a residential dwelling or child-occupied facility that contains a mass-per-area concentration of lead equal to or exceeding 40 ug/ft<sup>2</sup>[2] on floors or 250 ug/ft<sup>2</sup>[2] on interior window sills based on wipe samples.

"Elevated Blood Lead Level (EBL)" means an excessive absorption of lead that is a confirmed concentration of lead in whole blood of 20 micrograms of lead per deciliter of whole blood (ug/dl) for a single venous test or of 15-19 ug/dl in two consecutive tests taken 3 to 4 months apart.

"Emergency Renovation Operations" means renovation activities, such as operations necessitated by non-routine failures of equipment, that were not planned but result from a sudden, unexpected event that, if not immediately attended to, presents a safety or public health hazard, or threatens equipment and/or property with significant damage.

"Encapsulant" means a substance that forms a barrier between lead-[-]based paint and the environment using a liquid-

applied coating (with or without reinforcement materials) or an adhesively bonded covering material.

"Encapsulation" means the application of an encapsulant.

"Enclosure" means the use of rigid, durable construction materials that are mechanically fastened to the substrate in order to act as a barrier between lead-based paint and the environment.

"EPA" means the United States Environmental Protection Agency.

"Executive Secretary" means the [E]xecutive [S]ecretary of the Utah Air Quality Board.

"Friction Surface" means an interior or exterior surface that is subject to abrasion or friction, including, but not limited to, certain window, floor, and stair surfaces.

~~["Firm" means a company, partnership, corporation, sole proprietorship or individual doing business, association, or other business entity, a Federal, State, Tribal, or local government agency, or a nonprofit organization that performs lead-based paint activities or renovations.~~

"Guest Instructor" means an individual designated by the training program manager or principal instructor to provide instruction specific to the lecture, hands-on activities, or work practice components of a course.

"Hands-On Skills Assessment" means an evaluation which tests the trainees' ability to satisfactorily perform the work practices and procedures identified in R307-842-1(4), as well as any other skill taught in a training course.

"Hazardous Waste" means any waste as defined in 40 CFR 261.3.

"HEPA Vacuum" means a vacuum cleaner which has been designed with a high-efficiency particulate air (HEPA) filter as the last filtration stage. A HEPA filter is a filter that is capable of capturing particulates[~~particles~~] of 0.3 microns with 99.97% efficiency. The vacuum cleaner must be designed so that all the air drawn into the machine is expelled through the HEPA filter with none of the air leaking past it. HEPA vacuums must be operated and maintained in accordance with the manufacturer's instructions.

"Housing for the Elderly" means retirement communities or similar types of housing reserved for households composed of one or more persons 62 years of age or more at the time of initial occupancy.

"HUD" means the United States Department of Housing and Urban Development.

"Impact Surface" means an interior or exterior surface that is subject to damage by repeated sudden force such as certain parts of door frames.

"Inspection" means a surface-by-surface investigation to determine the presence of lead-based paint and the provision of a report explaining the results of the investigation.

"Interim Certification" means the status of an individual who has successfully completed the appropriate training course in a discipline from an accredited training program, as defined by this section, but has not yet received formal certification in that discipline from the [E]xecutive [S]ecretary pursuant to R307-842-2. Interim certification expires 6 months after the completion of the training course, and is equivalent to a certificate for the 6-month period.

"Interim Controls" means a set of measures designed to temporarily reduce human exposure or likely exposure to lead-based paint hazards, including specialized cleaning, repairs,

maintenance, painting, temporary containment, ongoing monitoring of lead-based paint hazards or potential hazards, and the establishment and operation of management and resident education programs.

"Interior Window Sill" means the portion of the horizontal window ledge that protrudes into the interior of the room.

"Lead-Based Paint" means paint or other surface coatings that contain lead equal to or in excess of 1.0 milligrams per square centimeter or more than 0.5% by weight.

"Lead-Based Paint Activities" means, in the case of target housing and child-occupied facilities, inspection, risk assessment, and abatement.

"Lead-Based Paint Activities Courses" means initial and refresher training courses (worker, supervisor, inspector, risk assessor, project designer) provided by accredited training programs.

"Lead-Based Paint Hazard" means, for the purposes of lead-based paint activities, any condition that causes exposure to lead from lead-contaminated dust, lead-contaminated soil, or lead-contaminated paint that is deteriorated or present in accessible surfaces, friction surfaces, or impact surfaces that would result in adverse human health effects as identified by the Administrator of the EPA pursuant to TSCA Section 403, and for the purposes of renovation, means hazardous lead-based paint, dust-lead hazard, or soil-lead hazard as identified in R307-840-2.

"Lead-Hazard Screen" means a limited risk assessment activity that involves limited paint and dust sampling as described in R307-842-3(3).

"Living Area" means any area of a residential dwelling used by one or more children age 6 and under, including, but not limited to, living rooms, kitchen areas, dens, play rooms, and children's bedrooms.

"Loading" means the quantity of a specific substance present per unit of surface area, such as the amount of lead in micrograms contained in the dust collected from a certain surface area divided by the surface area in square feet or square meters.

"Local Government" means a county, city, town, borough, parish, district, association, or other public body (including an agency comprised of two or more of the foregoing entities) created under [S]state law.

"Mid-Yard" means an area of a residential yard approximately midway between the dripline of a residential building and the nearest property boundary or between the driplines of a residential building and another building on the same property.

"Minor Repair and Maintenance Activities" are activities, including minor heating, ventilation, or air conditioning work, electrical work, and plumbing, that disrupt 6 square feet or less of painted surface per room for interior activities or 20 square feet or less of painted surface for exterior activities where none of the work practices prohibited or restricted by R307-841-5(1)(c) are used and where the work does not involve window replacement or demolition of painted surface areas. When removing painted components, or portions of painted components, the entire surface area removed is the amount of painted surface disturbed. Jobs, other than emergency renovations, performed in the same room within the same 30 days must be considered the same job for the purpose of determining whether the job is a minor repair and maintenance activity.

"Multi-Family Dwelling" means a structure that contains more than one separate residential dwelling unit which is used or

occupied, or intended to be used or occupied, in whole or in part, as the home or residence of one or more persons.

"Multi-Family Housing" means a housing property consisting of more than four dwelling units.

"Nonprofit" means an entity which has demonstrated to any branch of the [F]federal [G]government or to a [S]state, municipal, tribal or territorial government, that no part of its net earnings inure to the benefit of any private shareholder or individual.

"Owner" means any entity that has legal title to target housing, including but not limited to individuals, partnerships, corporations, trusts, government agencies, housing agencies, [†]Indian tribes, and nonprofit organizations, except where a mortgagee holds legal title to property serving as collateral for a mortgage loan, in which case the owner would be the mortgagor.

"Paint In Poor Condition" means more than 10 square feet of deteriorated paint on exterior components with large surface areas, or more than 2 square feet of deteriorated paint on interior components with large surface areas (e.g., walls, ceilings, floors, doors), or more than 10%~~percent~~ of the total surface area of the component is deteriorated on interior or exterior components with small surface areas (window sills, baseboards, soffits, trim).

"Paint-lead hazard" means any of the following:

(a) Any lead-based paint on a friction surface that is subject to abrasion and where the lead dust levels on the nearest horizontal surface underneath the friction surface (e.g., the window sill or floor) are equal to or greater than the dust-lead hazard levels identified in the definition of "Dust-lead hazard".

(b) Any damaged or otherwise deteriorated lead-based paint on an impact surface that is caused by impact from a related building component (such as a door knob that knocks into a wall or a door that knocks against its door frame).

(c) Any chewable lead-based painted surface on which there is evidence of teeth marks.

(d) Any other deteriorated lead-based paint in any residential building or child-occupied facility or on the exterior of any residential building or child-occupied facility.

"Painted surface" means a component surface covered in whole or in part with paint or other surface coatings.

"Pamphlet" means the EPA pamphlet titled "Renovate Right: Important Lead Hazard Information for Families, Child Care Providers and Schools" developed under Section 406(a) of TSCA for use in complying with section 406(b) of TSCA. This includes reproductions of the pamphlet when copied in full and without revision or deletion of material from the pamphlet (except for the addition or revision of [S]state or local sources of information).

"Permanently Covered Soil" means soil which has been separated from human contact by the placement of a barrier consisting of solid, relatively impermeable materials, such as pavement or concrete. Grass, mulch, and other landscaping materials are not considered permanent covering.

"Person" means any natural or judicial person including any individual, corporation, partnership, or association, any [†]Indian tribe, [S]state, or political subdivision thereof, any interstate body, and any~~government~~ department, agency, or instrumentality of the federal government.

"Play Area" means an area of frequent soil contact by children of less than 6 years of age as indicated by, but not limited to, such factors including the presence of play equipment (e.g.,

sandboxes, swing sets, and sliding boards), toys, or other children's possessions, observations of play patterns, or information provided by parents, residents, care givers, or property owners.

"Principal Instructor" means the individual who has the primary responsibility for organizing and teaching a particular course.

"Recognized Laboratory" means an environmental laboratory recognized by EPA pursuant to TSCA Section 405(b) as being capable of performing an analysis for lead compounds in paint, soil, and dust.

"Recognized Test Kit" means a commercially available kit recognized by EPA under 40 CFR 745.88 as being capable of allowing a user to determine the presence of lead at levels equal to or in excess of 1.0 milligrams per square centimeter, or more than 0.5% lead by weight, in a paint chip, paint powder, or painted surface.

"Reduction" means measures designed to reduce or eliminate human exposure to lead-based paint hazards through methods including interim controls and abatement.

"Renovation" means the modification of an existing structure, or portion thereof, that results in the disturbance of painted surfaces, unless that activity is performed as part of an abatement as defined by R307-840-2~~[this rule]~~. The term renovation includes, but is not limited to, the removal, modification, or repair of painted surfaces or painted components (e.g., modification of painted doors, surface restoration, window repair, surface preparation activity (such as sanding, scraping, or other such activities that may generate paint dust)), the removal of building components (e.g., walls, ceilings, plumbing, windows), weatherization projects (e.g., cutting holes in painted surfaces to install blown-in insulation or to gain access to attics, plan[n]ing thresholds to install weather-stripping), and interim controls that disturb painted surfaces. A renovation performed for the purpose of converting a building, or part of a building, into target housing or a child-occupied facility is a renovation under this rule. The term renovation does not include minor repair and maintenance activities.

"Renovator" means an individual who either performs or directs workers who perform renovations.

"Residential Building" means a building containing one or more residential dwellings.

"Residential Dwelling" means (1) a detached single family dwelling unit, including attached structures such as porches and stoops; or (2) a single family dwelling unit in a structure that contains more than one separate residential dwelling unit, which is used or occupied, or intended to be used or occupied, in whole or in part, as the home or residence of one or more persons.

"Risk Assessment" means (1) an on-site investigation to determine the existence, nature, severity, and location of lead-based paint hazards~~;~~, and (2) the provision of a report by the individual or firm conducting the risk assessment, explaining the results of the investigation and options for reducing lead-based paint hazards.

"Room" means a separate part of the inside of a building, such as a bedroom, living room, dining room, kitchen, bathroom, laundry room, or utility room. To be considered a separate room, the room must be separated from adjoining rooms by built-in walls or archways that extend at least 6 inches from an intersecting wall. Half walls or bookcases count as room separators if built-in. Movable or collapsible partitions or partitions consisting solely of

shelves or cabinets are not considered built-in walls. A screened in porch that is used as a living area is a room.

"Soil Sample" means a sample collected in a representative location using ASTM E1727, "Standard Practice for Field Collection of Soil Samples for Lead Determination by Atomic Spectrometry Techniques," or equivalent method.

"Soil-lead hazard" means bare soil on residential real property or on the property of a child-occupied facility that contains total lead equal to or exceeding 400 parts per million (ug/g) in a play area or average 1,200 parts per million of bare soil in the rest of the yard based on soil samples.

"Start Date" means the first day of any lead-based paint activities training course or lead-based paint abatement activity.

"Start Date Provided to the [E]xecutive [S]ecretary" means the start date included in the original notification or the most recent start date provided to the [E]xecutive [S]ecretary in an updated notification.

"State" means any [S]tate of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, the Canal Zone, American Samoa, the Northern Mariana Islands, or any other territory or possession of the United States.

"Target housing" means any housing constructed prior to 1978, except housing for the elderly or persons with disabilities (unless any one or more children age 6 years or under resides or is expected to reside in such housing for the elderly or persons with disabilities) or any 0-bedroom dwelling.

"Training curriculum" means an established set of course topics for instruction in an accredited training program for a particular discipline designed to provide specialized knowledge and skills.

"Training Hour" means at least 50 minutes of actual learning, including, but not limited to, time devoted to lecture, learning activities, small group activities, demonstrations, evaluations, and hands-on experience.

"TSCA" means the Toxic Substances Control Act, 15 U.S.C. 2601.

"Training Manager" means the individual responsible for administering a training program and monitoring the performance of principal instructors and guest instructors.

"Training Provider" means any organization or entity accredited under R307-842-1 to offer lead-based paint activities, renovator, or dust sampling technician courses.

"Vertical containment" means a vertical barrier consisting of plastic sheeting or other impermeable material over scaffolding or a rigid frame, or an equivalent system of containing the work area. Vertical containment is required for some exterior renovations but it may be used on any renovation.

"Visual Inspection for Clearance Testing" means the visual examination of a residential dwelling or a child-occupied facility following abatement to determine whether or not the abatement has been successfully completed.

"Visual Inspection for Risk Assessment" means the visual examination of a residential dwelling or a child-occupied facility to determine the existence of deteriorated lead-based paint or other potential sources of lead-based paint hazards.

"Weighted Arithmetic Mean" means the arithmetic mean of sample results weighted by the number of subsamples in each sample. Its purpose is to give influence to a sample relative to the

surface area it represents. A single surface sample is comprised of a single subsample. A composite sample may contain from two to four subsamples of the same area as each other and of each single surface sample in the composite. The weighted arithmetic mean is obtained by summing, for all samples, the product of the sample's result multiplied by the number of subsamples in the sample, and dividing the sum by the total number of subsamples contained in all samples. For example, the weighted arithmetic mean of a single surface sample containing 60 ug/ft<sup>2</sup>[2], a composite sample (3 subsamples) containing 100 ug/ft<sup>2</sup>[2], and a composite sample (4 subsamples) containing 110 ug/ft<sup>2</sup>[2] is 100 ug/ft<sup>2</sup>[2]. This result is based on the equation  $(60+(3*100)+(4*110))/(1+3+4)$ .

"Wet Disposable Cleaning Cloth" means a commercially available, pre-moistened white disposable cloth designed to be used for cleaning hard surfaces such as uncarpeted floors or counter tops.

"Wet Mopping System" means a device with the following characteristics: A long handle, a mop head designed to be used with disposable absorbent cleaning pads, a reservoir for cleaning solution, and a built-in mechanism for distributing or spraying the cleaning solution onto a floor, or a method of equivalent efficacy.

"Window Trough" means, for a typical double-hung window, the portion of the exterior window sill between the interior window sill (or stool) and the frame of the storm window. If there is no storm window, the window trough is the area that receives both the upper and lower window sashes when they are both lowered. The window trough is sometimes referred to as the window "well."

"Wipe Sample" means a sample collected by wiping a representative surface of known area, as determined by ASTM E1728, "Standard Practice for Field Collection of Settled Dust Samples Using Wipe Sampling Methods for Lead Determination by Atomic Spectrometry Techniques", or equivalent method, with an acceptable wipe material as defined in ASTM E1792, "Standard Specification for Wipe Sampling Materials for Lead in Surface Dust."

"Work Area" means the area that the certified renovator establishes to contain the dust and debris generated by a renovation.

"0-Bedroom Dwelling" means any residential dwelling in which the living area is not separated from the sleeping area. The term includes efficiencies, studio apartments, dormitory housing, military barracks, and rentals of individual rooms in residential dwellings.

**KEY: definitions, paint, lead-based paint**

**Date of Enactment or Last Substantive Amendment:** ~~April 8, 2010~~ **2012**

**Notice of Continuation:** May 7, 2009

**Authorizing, and Implemented or Interpreted Law:** 19-2-104(1)(i)

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**Environmental Quality, Air Quality**  
**R307-841**  
**Residential Property and Child-Occupied Facility Renovation**

**NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE NO.: 35858

FILED: 02/07/2012

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** EPA has made significant changes to its lead-based paint rules, and the Air Quality Board is implementing those changes into this rule to conform with current EPA rules and to retain program delegation from the EPA.

**SUMMARY OF THE RULE OR CHANGE:** The proposed rule amendment reflects changes EPA has made to its lead-based paint rules. Those changes include adding an exception that the rule does not apply to renovations in target housing or child-occupied facilities in which a qualified lab determines that chip samples taken by a certified renovator from the area to be renovated do not contain lead-based paint. The proposed amendment to the rule adds more information distribution requirements, including adding more information on signage and pamphlets that are intended for interested persons and occupants. The proposed rule adds work practice standards for the use of vertical containment systems and floor and ground containment measures when vertical containment systems are used. This rule makes several changes to the recordkeeping and reporting requirements, including defining what records or reports are acceptable to determine that lead-based paint is not present on the components affected by a renovation. Refresher training grace periods for certified disciplines are also added to the rule.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Subsection 19-2-104(1)(i)

**ANTICIPATED COST OR SAVINGS TO:**

◆ **THE STATE BUDGET:** Because no new requirements are created that are not already required by the federal government, no costs or savings are anticipated for the state budget.

◆ **LOCAL GOVERNMENTS:** Because no new requirements are created that are not already required by the federal government, no costs or savings are anticipated for local government.

◆ **SMALL BUSINESSES:** Because no new requirements are created that are not already required by the federal government, no costs or savings are anticipated for small businesses.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** Because no new requirements are created that are not already required by the federal government, no costs or savings are anticipated for persons other than small businesses, businesses, or local government entities.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** Because no new requirements are created that are not

already required by the federal government, no costs or savings are anticipated for affected persons.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Because no new requirements are created that are not already required by the federal government, no costs or savings are anticipated for business.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

ENVIRONMENTAL QUALITY  
AIR QUALITY  
FOURTH FLOOR  
195 N 1950 W  
SALT LAKE CITY, UT 84116-3085  
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Mark Berger by phone at 801-536-4000, by FAX at 801-536-0085, or by Internet E-mail at mberger@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 04/02/2012

THIS RULE MAY BECOME EFFECTIVE ON: 05/03/2012

AUTHORIZED BY: Bryce Bird, Director

### **R307. Environmental Quality, Air Quality.**

#### **R307-841. Residential Property and Child-Occupied Facility Renovation.**

##### **R307-841-1. Purpose.**

This rule contains regulations developed under Sections 402 and 406 of the Toxic Substances Control Act (15 U.S.C. 2682 and 2686) and applies to all renovations performed for compensation in target housing and child-occupied facilities. The purpose of this rule is to ensure the following:

(1) Owners and occupants of target housing and child-occupied facilities receive information on lead-based paint hazards before these renovations begin; and

(2) Individuals performing renovations regulated in accordance with R307-841-3 are properly trained;[;] renovators[;] and firms performing these renovations are certified;[;] and the work practices in R307-841-5 are followed during these renovations.

##### **R307-841-2. Effective Dates.**

(1) Training, certification and accreditation requirements, and work practice standards. The training, certification and accreditation requirements[;] and work practice standards in this rule are applicable[will become effective] as follows:

(a) Training programs. Effective April 8, 2010, [N]no training program may provide, offer, or claim to provide training or refresher training for [E]executive [S]secretary certification as a renovator or a dust sampling technician without accreditation from

the [E]executive [S]secretary under R307-842-1. Training programs may apply for accreditation under R307-842-1;

(b) Firms.

(i) Firms may apply for certification under R307-841-7 beginning April 8, 2010.

(ii) On or after April 8, 2010, [N]no firm may perform, offer, or claim to perform renovations without certification from the [E]executive [S]secretary under R307-841-7 in target housing or child-occupied facilities, unless the renovation qualifies as one of the exceptions identified in R307-841-3(1)[~~or (3)~~].

(c) Individuals. On or after April 8, 2010, [A]all renovations must be directed by renovators certified in accordance with R307-841-8(1) and performed by certified renovators or individuals trained in accordance with R307-841-8(2)(b) in target housing or child-occupied facilities, unless the renovation qualifies [as]for one of the exceptions identified in R307-841-3(1)[~~or (3)~~].

(d) Work practices.

(i) On or after April 8, 2010 and before July 5, 2012, [A]all renovations must be performed in accordance with the work practice standards in R307-841-5 and the associated recordkeeping requirements in R307-841-6(2)(a) and (2)(f) [~~and (2)(g)~~] in target housing or child-occupied facilities, unless the renovation qualifies for[as one of] the exceptions identified in R307-841-3(1)[~~or (3)~~]. This does not apply to renovations in target housing for which the firm performing the renovation has obtained a statement signed by the owner that the renovation will occur in the owner's residence, no child under age six resides there, the housing is not a child-occupied facility, and the owner acknowledges that the work practices to be used during the renovation will not necessarily include all of the lead-safe work practices contained in EPA's renovation, repair, and painting rule. For the purposes of this section, a child resides in the primary residence of his or her custodial parents, legal guardians, and foster parents. A child also resides in the primary residence of an informal caretaker if the child lives and sleeps most of the time at the caretaker's residence.

(ii) On or after July 5, 2012, all renovations must be performed in accordance with the work practice standards in R307-841-5 and the associated recordkeeping requirements in R307-841-6(2)(a) and (2)(f) in target housing or child-occupied facilities, unless the renovation qualifies for the exception identified in R307-841-3(1).

(2) Renovation-specific pamphlet. Renovators or firms performing renovations must provide owners and occupants with "Renovate Right: Important Lead Hazard Information for Families, Child Care Providers and Schools."

##### **R307-841-3. Applicability.**

(1) This rule applies to all renovations performed for compensation in target housing and child-occupied facilities, except for the following:

(a) Renovations in target housing or child-occupied facilities in which a written determination has been made by an inspector or risk assessor, certified pursuant to R307-842-2, that the components affected by the renovation are free of paint or other surface coatings that contain lead equal to or in excess of 1.0 milligrams/per square centimeter (mg/cm<sup>2</sup>[2]) or 0.5% by weight, where the firm performing the renovation has obtained a copy of the determination, or

(b) Renovations in target housing or child-occupied facilities in which a certified renovator, using an EPA-recognized test kit as defined in R307-840-2 and following the kit manufacturer's instructions, has tested each component affected by the renovation and determined that the components are free of paint or other surface coatings that contain lead equal to or in excess of 1.0 mg/cm<sup>2</sup>[2] or 0.5% by weight. If the components make up an integrated whole, such as the individual stair treads and risers of a single staircase, the renovator is required to test only one of the individual components, unless the individual components appear to have been repainted or refinished separately.

(c) Renovations in target housing or child-occupied facilities in which a certified renovator has collected a paint chip sample from each painted component affected by the renovation and a laboratory recognized by EPA pursuant to section 405(b) of TSCA as being capable of performing analyses for lead compounds in paint chip samples has determined that the samples are free of paint or other surface coatings that contain lead equal to or in excess of 1.0 mg/cm<sup>2</sup> or 0.5% by weight. If the components make up an integrated whole, such as the individual stair treads and risers of a single staircase, the renovator is required to test only one of the individual components, unless the individual components appear to have been repainted or refinished separately.

(2) The information distribution requirements in R307-841-4 do not apply to emergency renovations, which are renovation activities that were not planned but result from a sudden, unexpected event (such as non-routine failures of equipment) that, if not immediately attended to, presents a safety or public health hazard, or threatens equipment and/or property with significant damage. Interim controls performed in response to an elevated blood lead level in a resident child are also emergency renovations. Emergency renovations other than interim controls are also exempt from the warning sign, containment, waste handling, training, and certification requirements in R307-841-5, R307-841-7, and R307-841-8 to the extent necessary to respond to the emergency. Emergency renovations are not exempt from the cleaning requirements of R307-841-5(1)(e) which must be performed by certified renovators or individuals trained in accordance with R307-841-8(2)(b), the cleaning verification requirements of R307-841-5(2), which must be performed by certified renovators, and[or] the recordkeeping requirements of R307-841-6(2)(e)[f] and (f)[g].

~~(3) The training requirements in R307-841-8 and the work practice standards for renovation activities in R307-841-5 apply to all renovations covered by this rule, except for renovations in target housing for which the firm performing the renovation has obtained a statement signed by the owner that the renovation will occur in the owner's residence, no child under age 6 resides there, no pregnant woman resides there, the housing is not a child-occupied facility, and the owner acknowledges that the renovation firm will not be required to use the work practices contained in the Executive Secretary's renovation, repair, and painting rule. For the purposes of this section, a child resides in the primary residence of his or her custodial parents, legal guardians, or foster parents. A child also resides in the primary residence of an informal caretaker if the child lives and sleeps most of the time at the caretaker's residence.~~

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#### **R307-841-4. Information Distribution Requirements.**

(1) Renovations in dwelling units. No more than 60 days before beginning renovation activities in any residential dwelling unit of target housing, the firm performing the renovation must:

(a) Provide the owner of the unit with the pamphlet, and comply with one of the following:

(i) Obtain, from the owner, a written acknowledgement that the owner has received the pamphlet; or

(ii) Obtain a certificate of mailing at least 7 days prior to the renovation; and

(b) If the owner does not occupy the dwelling unit, provide an adult occupant of the unit with the pamphlet, and comply with one of the following:

(i) Obtain, from the adult occupant, a written acknowledgement that the occupant has received the pamphlet, or certify in writing that a pamphlet has been delivered to the dwelling and that the firm performing the renovation[renovator] has been unsuccessful in obtaining a written acknowledgement from an adult occupant. Such certification must include the address of the unit undergoing renovation, the date and method of delivery of the pamphlet, names of the persons delivering the pamphlet, reason for lack of acknowledgement (e.g., occupant refuses to sign, no adult occupant available), the signature of a representative of the firm performing the renovation, and the date of signature; or

(ii) Obtain a certificate of mailing at least 7 days prior to the renovation.

(2) Renovations in common areas. No more than 60 days before beginning renovation activities in common areas of multi-unit target housing, the firm performing the renovation must:

(a) Provide the owner with the pamphlet, and comply with one of the following:

(i) Obtain, from the owner, a written acknowledgement that the owner has received the pamphlet; or

(ii) Obtain a certificate of mailing at least 7 days prior to the renovation;

(b) Comply with one of the following:

(i) Notify in writing, or ensure written notification of, each affected unit and make the pamphlet available upon request prior to the start of renovation. Such notification shall be accomplished by distributing written notice to each affected unit. The notice shall describe the general nature and locations of the planned renovation activities, the expected starting and ending dates, and a statement of how the occupant can obtain the pamphlet and a copy of the records required by R307-841-6(3) and (4) at no cost to the occupants[charge from the firm performing the renovation]; or

(ii) While the renovation is ongoing, post informational signs describing the general nature and locations of the renovation and the anticipated completion date. These signs must be posted in areas where they are likely to be seen by the occupants of all of the affected units. The signs must be accompanied by a posted copy of the pamphlet or information on how interested occupants can review a copy of the pamphlet or obtain a copy from the renovation firm at no cost to occupants. The signs must also include information on how interested occupants can review a copy of the records required by R307-841-6(3) and (4) or obtain a copy from the renovation firm at no cost to the occupants;

(c) Prepare, sign, and date a statement describing the steps performed to notify all occupants of the intended renovation activities and to provide the pamphlet; and

(d) If the scope, locations, or expected starting and ending dates of the planned renovation activities change after the initial notification, and the firm provided written initial notification to each affected unit, the firm performing the renovation must provide further written notification to the owners and occupants providing revised information on the ongoing or planned activities. This subsequent notification must be provided before the firm performing the renovation initiates work beyond that which was described in the original notice.

(3) Renovations in child-occupied facilities. No more than 60 days before beginning renovation activities in any child-occupied facility, the firm performing the renovation must:

(a)(i) Provide the owner of the building with the pamphlet, and comply with one of the following:

(A[i]) Obtain, from the owner, a written acknowledgment that the owner has received the pamphlet; or

(B[ii]) Obtain a certificate of mailing at least 7 days prior to the renovation;

(ii[b]) If the adult representative of the child-occupied facility is not the owner of the building, provide an adult representative of the child-occupied facility with the pamphlet, and comply with one of the following:

(A[i]) Obtain, from the adult representative, a written acknowledgment that the adult representative has received the pamphlet, or certify in writing that a pamphlet has been delivered to the facility and that the firm performing the renovation has been unsuccessful in obtaining a written acknowledgment from an adult representative. Such certification must include the address of the child-occupied facility undergoing renovation, the date and method of delivery of the pamphlet, names of the persons delivering the pamphlet, reason for lack of acknowledgment (e.g., representative refuses to sign), the signature of a representative of the firm performing the renovation, and the date of signature; or

(B[ii]) Obtain a certificate of mailing at least 7 days prior to the renovation;

(b[e]) Provide the parents and guardians of children using the child-occupied facility with the pamphlet and information describing the general nature and locations of the renovation and the anticipated completion date and information on how interested parents or guardians of children frequenting the child-occupied facility can review a copy of the records required by R307-841-6(3) and (4) or obtain a copy from the renovation firm at no cost to the parents or guardians by complying with one of the following:

(i) Mail or hand-deliver the pamphlet and the renovation information to each parent or guardian of a child using the child-occupied facility; or

(ii) While the renovation is ongoing, post informational signs describing the general nature and locations of the renovation and the anticipated completion date. These signs must be posted in areas where they can be seen by the parents or guardians of the children frequenting the child-occupied facility. The signs must be accompanied by a posted copy of the pamphlet or information on how interested parents or guardians of children frequenting the child-occupied facility can review a copy of the pamphlet or obtain a copy from the renovation firm at no cost to the parents or guardians. The signs must also include information on how

interested parents or guardians of children frequenting the child-occupied facility can review a copy of the records required by R307-841-6(3) and (4) or obtain a copy from the renovation firm at no cost to the parents or guardians.~~;~~~~and]~~

(c[~~d~~]) The renovation firm must prepare, sign, and date a statement describing the steps performed to notify all parents and guardians of the intended renovation activities and to provide the pamphlet.

(4) Written acknowledgement. The written acknowledgements required by paragraphs (1)(a)(i), (1)(b)(i), (2)(a)(i), (3)(a)(i)(A), and (3)(b)(i)(A) of this section must:

(a) Include a statement recording the owner or occupant's name and acknowledging receipt of the pamphlet prior to the start of renovation, the address of the unit undergoing renovation, the signature of the owner or occupant as applicable, and the date of signature;

(b) Be either a separate sheet or part of any written contract or service agreement for the renovation; and

(c) Be written in the same language as the text of the contract or agreement for the renovation or, in the case of non-owner occupied target housing, in the same language as the lease or rental agreement or the pamphlet.

#### **R307-841-5. Work Practice Standards.**

(1) Standards for renovation activities. Renovations must be performed by firms certified under R307-841-7 using renovators certified under R307-841-8. The responsibilities of certified firms are set forth in R307-841-7(4) and the responsibilities of certified renovators are set forth in R307-841-8(2).

(a) Occupant protection. Firms must post signs clearly defining the work area and warning occupants and other persons not involved in renovation activities to remain outside of the work area. To the extent practicable, these signs must be in the primary language of the occupants. These signs must be posted before beginning the renovation, must remain in place, and must be readable until the renovation and the post-renovation cleaning verification have been completed. If warning signs have been posted in accordance with 24 CFR 35.1345(b)(2) or 29 CFR 1926.62(m), additional signs are not required by this section.

(b) Containing the work area. Before beginning the renovation, the firm must isolate the work area so that no dust or debris leaves the work area while the renovation is being performed. In addition, the firm must maintain the integrity of the containment by ensuring that any plastic or other impermeable materials are not torn or displaced, and taking any other steps necessary to ensure that no dust or debris leaves the work area while the renovation is being performed. The firm must also ensure that containment is installed in such a manner that it does not interfere with occupant and worker egress in an emergency.

(i) Interior renovations. The firm must:

(A) Remove all objects from the work area, including furniture, rugs, and window coverings, or cover them with plastic sheeting or other impermeable material with all seams and edges taped or otherwise sealed;

(B) Close and cover all duct openings in the work area with taped-down plastic sheeting or other impermeable material;

(C) Close windows and doors in the work area. Doors must be covered with plastic sheeting or other impermeable material. Doors used as an entrance to the work area must be

covered with plastic sheeting or other impermeable material in a manner that allows workers to pass through while confining dust and debris to the work area;

(D) Cover the floor surface, including installed carpet, with taped-down plastic sheeting or other impermeable material in the work area 6 feet beyond the perimeter of surfaces undergoing renovation or a sufficient distance to contain the dust, whichever is greater. Floor containment measures may stop at the edge of the vertical barrier when using a vertical containment system consisting of impermeable barriers that extend from the floor to the ceiling and are tightly sealed at joints with the floor, ceiling, and walls; and

(E) Use precautions to ensure that all personnel, tools, and other items, including the exterior of containers of waste, are free of dust and debris before leaving the work area.

(ii) Exterior renovations. The firm must:

(A) Close all doors and windows within 20 feet of the renovation. On multi-story buildings, close all doors and windows within 20 feet of the renovation on the same floor as the renovation, and close all doors and windows on all floors below that are the same horizontal distance from the renovation;

(B) Ensure that doors within the work area that will be used while the job is being performed are covered with plastic sheeting or other impermeable material in a manner that allows workers to pass through while confining dust and debris to the work area;

(C) Cover the ground with plastic sheeting or other disposable impermeable material extending 10 feet beyond the perimeter of surfaces undergoing renovation or a sufficient distance to collect falling paint debris, whichever is greater, unless the property line prevents 10 feet of such ground covering. Ground containment measures may stop at the edge of the vertical barrier when using a vertical containment system; and

(D) If the renovation will affect surfaces within 10 feet of the property line, t[he] renovation firm must [take] erect vertical containment or equivalent extra precautions in containing the work area to ensure that dust and debris from the renovation does not contaminate adjacent[other] buildings[or other areas of the property] or migrate to adjacent properties. Vertical containment or equivalent extra precautions in containing the work area may also be necessary in other situations in order to prevent contamination of other buildings, other areas of the property, or adjacent buildings or properties.

(c) Prohibited and restricted practices. The work practices listed below ~~shall be~~ are prohibited or restricted during a renovation as follows:

(i) Open-flame burning or torching of ~~lead-based paint~~ painted surfaces is prohibited;

(ii) The use of machines ~~designed to that~~ remove ~~lead-based~~ paint or other surface coatings through high speed operation such as sanding, grinding, power planning, needle gun, abrasive blasting, or sandblasting, is prohibited on painted surfaces unless such machines have shrouds or containment systems and are equipped[used] with a HEPA vacuum attachment to collect dust and debris at the point of generation. Machines must be operated so that no visible dust or release of air occurs outside the shroud or containment system [exhaust control]; and

(iii) Operating a heat gun on painted surfaces ~~lead-based paint~~ is permitted only at temperatures below 1,100 degrees Fahrenheit.

(d) Waste from renovations.

(i) Waste from renovation activities must be contained to prevent releases of dust and debris before the waste is removed from the work area for storage or disposal. If a chute is used to remove waste from the work area, it must be covered.

(ii) At the conclusion of each work day and at the conclusion of the renovation, waste that has been collected from renovation activities must be stored under containment, in an enclosure, or behind a barrier that prevents release of dust and debris out of the work area and prevents access to dust and debris.

(iii) When the firm transports waste from renovation activities, the firm must contain the waste to prevent release of dust and debris.

(e) Cleaning the work area. After the renovation has been completed, the firm must clean the work area until no dust, debris, or residue remains.

(i) Interior and exterior renovations. The firm must:

(A) Collect all paint chips and debris and, without dispersing any of it, seal this material in a heavy-duty bag; and

(B) Remove the protective sheeting. Mist the sheeting before folding it, fold the dirty side inward, and either tape shut to seal or seal in heavy-duty bags. Sheeting used to isolate contaminated rooms from non-contaminated rooms must remain in place until after the cleaning and removal of other sheeting. Dispose of the sheeting as waste.

(ii) Additional cleaning for interior renovations. The firm must clean all objects and surfaces in the work area and within 2 feet of the work area in the following manner, cleaning from higher to lower:

(A) Walls. Clean walls starting at the ceiling and working down to the floor by either vacuuming with a HEPA vacuum or wiping with a damp cloth;

(B) Remaining surfaces. Thoroughly vacuum all remaining surfaces and objects in the work area, including furniture and fixtures, with a HEPA vacuum. The HEPA vacuum must be equipped with a beater bar when vacuuming carpets and rugs; and

(C) Wipe all remaining surfaces and objects in the work area, except for carpeted or upholstered surfaces, with a damp cloth. Mop uncarpeted floors thoroughly, using a mopping method that keeps the wash water separate from the rinse water, such as the 2-bucket mopping method, or using a wet mopping system.

(2) Standards for post-renovation cleaning verification.

(a) Interiors.

(i) A certified renovator must perform a visual inspection to determine whether dust, debris, or residue is still present. If dust, debris, or residue is present, these conditions must be removed by re-cleaning and another visual inspection must be performed.

(ii) After a successful visual inspection, a certified renovator must:

(A) Verify that each windowsill in the work area has been adequately cleaned, using the following procedure.

(I) Wipe the windowsill with a wet disposable cleaning cloth that is damp to the touch. If the cloth matches or is lighter than the cleaning verification card, the windowsill has been adequately cleaned.

(II) If the cloth does not match and is darker than the cleaning verification card, re-clean the windowsill as directed in paragraphs (1)(e)(ii)(B) and (1)(e)(ii)(C) of this section, then either use a new cloth or fold the used cloth in such a way that an unused

surface is exposed, and wipe the surface again. If the cloth matches or is lighter than the cleaning verification card, that windowsill has been adequately cleaned.

(III) If the cloth does not match and is darker than the cleaning verification card, wait for 1 hour or until the surface has dried completely, whichever is longer.

(IV) After waiting for the windowsill to dry, wipe the windowsill with a dry disposable cleaning cloth. After this wipe, the windowsill has been adequately cleaned.

(B) Wipe uncarpeted floors and countertops within the work area with a wet disposable cleaning cloth. Floors must be wiped using application device with a long handle and a head to which the cloth is attached. The cloth must remain damp at all times while it is being used to wipe the surface for post-renovation cleaning verification. If the surface within the work area is greater than 40 square feet, the surface within the work area must be divided into roughly equal sections that are each less than 40 square feet. Wipe each such section separately with a new wet disposable cleaning cloth.

(H) If the cloth used to wipe each section of the surface within the work area matches the cleaning verification card, the surface has been adequately cleaned.

(I) If the cloth used to wipe a particular surface section does not match the cleaning verification card, re-clean that section of the surface as directed in paragraphs (1)(e)(ii)(B) and (1)(e)(ii)(C) of this section, then use a new wet disposable cleaning cloth to wipe that section again. If the cloth matches the cleaning verification card, that section of the surface has been adequately cleaned.

(J) If the cloth used to wipe a particular surface section does not match the cleaning verification card after the surface has been re-cleaned, wait for 1 hour or until the entire surface within the work area has dried completely, whichever is longer.

(III) After waiting for the entire surface within the work area to dry, wipe each section of the surface that has not yet achieved post-renovation cleaning verification with a dry disposable cleaning cloth. After this wipe, that section of the surface has been adequately cleaned.

(iii) When the work area passes the post-renovation cleaning verification, remove the warning signs.

(b) Exteriors. A certified renovator must perform a visual inspection to determine whether dust, debris, or residue is still present on surfaces in and below the work area, including windowsills and the ground. If dust, debris, or residue is present, these conditions must be eliminated and another visual inspection must be performed. When the area passes the visual inspection, remove the warning signs.

(3) Optional dust clearance testing. Cleaning verification need not be performed if the contract between the renovation firm and the person contracting for the renovation or another [F]ederal, [S]tate, [F]territorial, [F]tribal, or local law or regulation requires:

(a) The renovation firm to perform dust clearance sampling at the conclusion of a renovation covered by this rule.

(b) The dust clearance samples are required to be collected by a certified inspector, risk assessor, or dust sampling technician.

(c) The renovation firm is required to re-clean the work area until the dust clearance sample results are below the clearance standards in R307-842-3(5)(h) or any local standard.

(4) Activities conducted after post-renovation cleaning verification. Activities that do not disturb paint, such as applying paint to walls that have already been prepared, are not regulated by this rule if they are conducted after post-renovation cleaning verification has been performed.

#### **R307-841-6. Recordkeeping and Reporting Requirements.**

(1) Firms performing renovations must retain and, if requested, make available to the [E]xecutive [S]ecretary all records necessary to demonstrate compliance with this rule for a period of 3 years following completion of the renovation. This 3-year retention requirement does not supersede longer obligations required by other provisions for retaining the same documentation.

(2) Records that must be retained pursuant to paragraph (1) of this section shall include (where applicable):

(a) Records or reports certifying that a determination had been made [by an inspector (certified pursuant to R307-842)] that lead-based paint is not present on the components affected by the renovation, as described in R307-841-3(1)(a). These records or reports include:

(i) Reports prepared by a certified inspector or certified risk assessor certified pursuant to R307-842-2.

(ii) Records prepared by a certified renovator after using EPA-recognized test kits, including an identification of the manufacturer and model of any test kits used, a description of the components that were tested including their locations, and the result of each test kit used.

(iii) Records prepared by a certified renovator after collecting paint chip samples, including a description of the components that were tested including their locations, the name and address of the NLLAP-recognized entity performing the analysis, and the results for each sample.

(b) Signed and dated acknowledgements of receipt as described in R307-841-4(1)(a)(i), (1)(b)(i), (2)(a)(i), (3)(a)(i)(A), and (3)(a)(b)(ii)(A).

(c) Certifications of attempted delivery as described in R307-841-4(1)(b)(i) and (3)(a)(b)(ii)(A).

(d) Certificates of mailing as described in R307-841-4(1)(a)(ii), (1)(b)(ii), (2)(a)(ii), (3)(a)(i)(B), and (3)(a)(b)(ii)(B).

(e) Records of notification activities performed regarding common area renovations, as described in R307-841-4(2)(c) and (2)(d), and renovations in child-occupied facilities, as described in R307-841-4(3)(b)(e).

~~(f) Any signed and dated statements received from owner-occupants documenting that the requirements of R307-841-5 do not apply. These statements must include a declaration that the renovation will occur in the owner's residence, a declaration that no children under age 6 reside there, a declaration that no pregnant woman resides there, a declaration that the housing is not a child-occupied facility, the address of the unit undergoing renovation, the owner's name, an acknowledgment by the owner that the work practices to be used during the renovation will not necessarily include all of the lead-safe work practices contained in the Executive Secretary's renovation, repair, and painting rule, the~~

~~signature of the owner, and the date of signature. These statements must be written in the same language as the text of the renovation contract, if any.~~

] (f) Documentation of compliance with the requirements of R307-841-5, including documentation that a certified renovator was assigned to the project, that the certified renovator provided on-the-job training for workers used on the project, that the certified renovator performed or directed workers who performed all of the tasks described in R307-841-5(1), and that the certified renovator performed the post-renovation cleaning verification described in R307-841-5(2). If the renovation firm was unable to comply with all of the requirements of this rule due to an emergency as defined in R307-841-3, the firm must document the nature of the emergency and the provisions of the rule that were not followed. This documentation must include a copy of the ~~certified renovator's~~ current Utah Lead-Based Paint Renovator certification card, and a certification by the certified renovator assigned to the project that:

(i) Training was provided to workers (topics must be identified for each worker).

(ii) Warning signs were posted at the entrances to the work area.

(iii) If test kits were used, that the specified brand of kits was used at the specified locations and that the results were as specified.

~~(iv) If paint chip samples were collected, that the samples were collected at the specified locations, that the specified NLLAP-recognized laboratory analyzed the samples, and that the results were as specified.~~

(v) The work area was contained by:

(A) Removing or covering all objects in the work area (interiors);

(B) Closing and covering all HVAC ducts in the work area (interiors);

(C) Closing all windows in the work area (interiors) or closing all windows in and within 20 feet of the work area (exteriors);

(D) Closing and sealing all doors in the work area (interiors) or closing and sealing all doors in and within 20 feet of the work area (exteriors);

(E) Covering doors in the work area that were being used to allow passage but prevent spread of dust;

(F) Covering the floor surface, including installed carpet, with taped-down plastic sheeting or other impermeable material in the work area 6 feet beyond the perimeter of surfaces undergoing renovation or a sufficient distance to contain the dust, whichever is greater (interiors) or covering the ground with plastic sheeting or other disposable impermeable material anchored to the building extending 10 feet beyond the perimeter of surfaces undergoing renovation or a sufficient distance to collect falling paint debris, whichever is greater, unless the property line prevents 10 feet of such ground covering, weighted down by heavy objects (exteriors); and

(G) Installing (if necessary) vertical containment to prevent migration of dust and debris to adjacent property (exteriors).

(vi) Waste was contained on-site and while being transported off-site.

(vii) The work area was properly cleaned after the renovation by:

(A) Picking up all chips and debris, misting protective sheeting, folding it dirty side inward, and taping it for removal; and

(B) Cleaning the work area surfaces and objects using a HEPA vacuum and/or wet cloths or mops (interiors).

(viii) The certified renovator performed the post-renovation cleaning verification (the results of which must be briefly described, including the number of wet and dry cloths used).

(3)(a) When the final invoice for the renovation is delivered or within 30 days of the completion of the renovation, whichever is earlier, the renovation firm must provide information pertaining to compliance with this rule to the following persons:

(i) The owner of the building; and, if different,

(ii) An adult occupant of the residential dwelling, if the renovation took place within a residential dwelling, or an adult representative of the child-occupied facility, if the renovation took place within a child-occupied facility.

~~](3) When test kits are used, the renovation firm must, within 30 days of the completion of the renovation, provide identifying information as to the manufacturer and model of the test kits used, a description of the components that were tested including their locations, and the test kit results to the person who contracted for the renovation.~~

(b) When performing renovations in common areas of multi-unit target housing, renovation firms must post the information required by this rule or instructions on how interested occupants can obtain a copy of this information. This information must be posted in areas where it is likely to be seen by the occupants of all of the affected units.

(c) The information required to be provided by paragraph (3) of this section may be provided by completing the sample form titled "Sample Renovation Recordkeeping Checklist" or a similar form containing the test kit information required by R307-841-6(2)(a)(ii) and the training and work practice compliance information required by R307-841-6(2)(f).

~~(4) If dust clearance sampling is performed in lieu of cleaning verification as permitted by R307-841-5(3), the renovation firm must provide, within 30 days of the completion of the renovation, a copy of the dust sampling report to the person who contracted for the renovation.]~~when the final invoice for the renovation is delivered or within 30 days of the completion of the renovation, whichever is earlier, a copy of the dust sampling report to:

(a) The owner of the building; and, if different,

(b) An adult occupant of the residential dwelling, if the renovation took place within a residential dwelling, or an adult representative of the child-occupied facility, if the renovation took place within a child-occupied facility.

(c) When performing renovations in common areas of multi-unit target housing, renovation firms must post these dust sampling reports or information on how interested occupants of the housing being renovated can obtain a copy of the report. This information must be posted in areas where they are likely to be seen by the occupants of all of the affected units.

**R307-841-7. Firm Certification.**

(1) Initial certification.

(a) Firms that perform renovations for compensation must apply to the [E]xecutive [S]ecretary for certification to perform renovations or dust sampling. To apply, a firm must submit to the [E]xecutive [S]ecretary a completed "Lead-Based Paint Certification Application for Firms," signed by an authorized agent of the firm, and pay the correct amount of fees.

(b) After the [E]xecutive [S]ecretary receives a firm's application, the [E]xecutive [S]ecretary will take one of the following actions within 90 days of the date the application is received:

(i) The [E]xecutive [S]ecretary will approve a firm's application if the [E]xecutive [S]ecretary determines that it is complete and that the environmental compliance history of the firm, its principals, or its key employees does not show an unwillingness or inability to maintain compliance with environmental statutes or regulations. An application is complete if it contains all of the information requested on the form and includes at least the correct amount of fees. When the [E]xecutive [S]ecretary approves a firm's application, the [E]xecutive [S]ecretary will issue the firm a certificate with an expiration date not more than 5 years from the date the application is approved;

(ii) The [E]xecutive [S]ecretary will request a firm to supplement its application if the [E]xecutive [S]ecretary determines that the application is incomplete. If the [E]xecutive [S]ecretary requests a firm to supplement its application, the firm must submit the requested information or pay the additional fees within 30 days of the date of the request; and

(iii) The [E]xecutive [S]ecretary will not approve a firm's application if the firm does not supplement its application in accordance with paragraph (1)(b)(ii) of this section or if the [E]xecutive [S]ecretary determines that the environmental compliance history of the firm, its principals, or its key employees demonstrates an unwillingness or inability to maintain compliance with environmental statutes or regulations. The [E]xecutive [S]ecretary will send the firm a letter giving the reason for not approving the application. The [E]xecutive [S]ecretary will not refund the application fees. A firm may reapply for certification at any time by filing a new, complete application that includes the correct amount of fees.

(2) Re-certification. To maintain its certification, a firm must be re-certified by the [E]xecutive [S]ecretary.

(a) Timely and complete application. To be re-certified, a firm must submit a complete application for re-certification. A complete application for re-certification includes a completed "Lead-Based Paint Certification Application for Firms" which contains all of the information requested by the form and is signed by an authorized agent of the firm, noting on the form that it is submitted as a re-certification. A complete application must also include the correct amount of fees.

(i) An application for re-certification is timely if it is postmarked 90 days or more before the date the firm's current certification expires. If the firm's application is complete and timely, the firm's current certification will remain in effect until its expiration date or until the [E]xecutive [S]ecretary has made a final decision to approve or disapprove the re-certification application, whichever is later.

(ii) If the firm submits a complete re-certification application less than 90 days before its current certification expires, and the [E]xecutive [S]ecretary does not approve the application

before the expiration date, the firm's current certification will expire and the firm will not be able to conduct renovations until the [E]xecutive [S]ecretary approves its re-certification application.

(iii) If the firm fails to obtain recertification before the firm's current certification expires, the firm must not perform renovations or dust sampling until it is certified anew pursuant to paragraph (1), of this section.

(b) [E]xecutive [S]ecretary action on an application. After the [E]xecutive [S]ecretary receives a firm's application for re-certification, the [E]xecutive [S]ecretary will review the application and take one of the following actions within 90 days of receipt:

(i) The [E]xecutive [S]ecretary will approve a firm's application if the [E]xecutive [S]ecretary determines that it is timely and complete and that the environmental compliance history of the firm, its principals, or its key employees does not show an unwillingness or inability to maintain compliance with environmental statutes or regulations. When the [E]xecutive [S]ecretary approves a firm's application for re-certification, the [E]xecutive [S]ecretary will issue the firm a new certificate with an expiration date not more than 5 years from the date that the firm's current certification expires.

(ii) The [E]xecutive [S]ecretary will request a firm to supplement its application if the [E]xecutive [S]ecretary determines that the application is incomplete.

(iii) The [E]xecutive [S]ecretary will not approve a firm's application if it is not received or is not complete as of the date that the firm's current certification expires, or if the [E]xecutive [S]ecretary determines that the environmental compliance history of the firm, its principals, or its key employees demonstrates an unwillingness or inability to maintain compliance with environmental statutes or regulations. The [E]xecutive [S]ecretary will send the firm a letter giving the reason for not approving the application. The [E]xecutive [S]ecretary will not refund the application fees. A firm may reapply for certification at any time by filing a new application and paying the correct amount of fees.

(3) Amendment of certification. A firm must amend its certification within 90 days of the date a change occurs to information included in the firm's most recent application. If the firm fails to amend its certification within 90 days of the date the change occurs, the firm may not perform renovations or dust sampling until its certification is amended.

(a) To amend a certification, a firm must submit a completed "Lead-Based Paint Certification Application for Firms," signed by an authorized agent of the firm, noting on the form that it is submitted as an amendment and indicating the information that has changed. The firm must also pay at least the correct amount of fees.

(b) If additional information is needed to process the amendment, or the firm did not pay the correct amount of fees, the [E]xecutive [S]ecretary will request the firm to submit the necessary information or fees. The firm's certification is not amended until the firm complies with the request.

(c) Amending a certification does not affect the certification expiration date.

(4) Firm responsibilities. Firms performing renovations must ensure that:

(a) All individuals performing renovation activities on behalf of the firm are either certified renovators or have been trained by a certified renovator in accordance with R307-841-8;

(b) A certified renovator is assigned to each renovation performed by the firm and discharges all of the certified renovator responsibilities identified in R307-841-8;

(c) All renovations performed by the firm are performed in accordance with the work practice standards in R307-841-5;

(d) The pre-renovation education requirements of R307-841-4 have been performed; and

(e) The recordkeeping requirements of R307-841-6 are met.

**R307-841-8. Renovator Certification and Dust Sampling Technician Certification.**

(1) Renovator certification and dust sampling technician certification.

(a) To become a certified renovator or certified dust sampling technician, an individual must successfully complete an initial lead-based paint renovator or dust-sampling technician~~the appropriate~~ course accredited by the ~~[E]xecutive [S]ecretary~~ under R307-842-1, the EPA under 40 CFR 745.225, or a state or tribal program that has been authorized by EPA pursuant to subpart Q of 40 CFR 745.

(b) Individuals who have successfully completed an accredited abatement worker or supervisor course, or individuals who have successfully completed an ~~[E]xecutive [S]ecretary~~, EPA, HUD, or EPA/HUD model renovation training course before October 4, 2011, but no later than the training course expiration date found on that training certificate, may take an accredited refresher renovator training course in lieu of the initial renovator training course to become a certified renovator.

(c) Individuals who have successfully completed an accredited lead-based paint inspector or risk assessor course before October 4, 2011, but no later than the training course expiration date found on that training certificate, may take an accredited refresher dust sampling technician course in lieu of the initial training to become a certified dust sampling technician. Individuals who are currently certified as lead-based paint inspectors or risk assessors may act as certified dust sampling technicians without further training.

(d) To maintain renovator certification or dust sampling technician certification, an individual must complete a renovator or dust sampling technician refresher course accredited by the ~~[E]xecutive [S]ecretary~~ under R307-842-1, the EPA under 40 CFR 745.225, or by a state or tribal program that is authorized under subpart Q of 40 CFR 745 within 5 years of the date the individual completed the initial course described in paragraph (1)(a) of this section. If the individual does not complete a refresher course within this time, the individual must re-take the initial course to become certified again.

(2) Renovator responsibilities. Certified renovators are responsible for ensuring compliance with R307-841-5 at all renovations to which they are assigned. A certified renovator:

(a) Must perform all of the tasks described in R307-841-5(2) and must either perform or direct workers who perform all of the tasks described in R307-841-5(1);

(b) Must provide training to workers on the work practices required by R307-841-5(1) that they will be using in performing their assigned tasks;

(c) Must be physically present at the work site when the signs required by R307-841-5(1)(a) are posted, while the work area containment required by R307-841-5(1)(b) is being established, and while the work area cleaning required by R307-841-5(1)(e) is performed;

(d) Must regularly direct work being performed by other individuals to ensure that the work practices required by R307-841-5(1) are being followed, including maintaining the integrity of the containment barriers and ensuring that dust or debris does not spread beyond the work area;

(e) Must be available, either on-site or by telephone, at all times that renovations are being conducted;

(f) When requested by the party contracting for renovation services, must use an acceptable test kit to determine whether components to be affected by the renovation contain lead-based paint;

(g) Must have with them at the work site their current Utah Lead-Based Paint Renovator certification card; and

(h) Must prepare the records required by R307-841-6(2) ~~(a)(ii), (iii), and (f)(g).~~

(3) Dust sampling technician responsibilities. When performing optional dust clearance sampling under R307-841-5(3), a certified dust sampling technician:

(a) Must collect dust samples in accordance with R307-842-3(5)(h) ~~(i) through (v)~~, must send the collected samples to a laboratory recognized by EPA under TSCA Section 405(b) ~~of TSCA~~, and must compare the results to the clearance levels in accordance with R307-842-3(5)(h); and

(b) Must have with them at the work site their current Utah Lead-Based Paint Dust Sampling Technician certification card.

**R307-841-9. Suspending, Revoking, or Modifying an Individual's or Firm's Certification.**

(1) Grounds for suspending, revoking, or modifying an individual's certification. The ~~[E]xecutive [S]ecretary~~ may suspend, revoke, or modify an individual's certification if the individual fails to comply with ~~[S]tate~~ lead-based paint administrative rules. The ~~[E]xecutive [S]ecretary~~ may also suspend, revoke, or modify a certified renovator's certification if the renovator fails to ensure that all assigned renovations comply with R307-841-5. In addition to an administrative or judicial finding of violation, execution of a consent agreement in settlement of an enforcement action constitutes, for purposes of this section, evidence of a failure to comply with relevant statutes or regulations.

(2) Grounds for suspending, revoking, or modifying a firm's certification. The ~~[E]xecutive [S]ecretary~~ may suspend, revoke, or modify a firm's certification if the firm:

(a) Submits false or misleading information to the ~~[E]xecutive [S]ecretary~~ in its application for certification or recertification,

(b) Fails to maintain or falsifies records required in R307-841-6, or

(c) Fails to comply, or an individual performing a renovation on behalf of the firm fails to comply, with [S]state lead-based paint administrative rules. In addition to an administrative or judicial finding of violation, execution of a consent agreement in settlement of an enforcement action constitutes, for purposes of this section, evidence of a failure to comply with relevant statutes or regulations.

**KEY: paint, lead-based paint, lead-based paint renovation**  
**Date of Enactment or Last Substantive Amendment: [~~April 8, 2010~~2012**  
**Authorizing, and Implemented or Interpreted Law: 19-2-104(1)(i)**

## Environmental Quality, Air Quality **R307-842** Lead-Based Paint Activities

**NOTICE OF PROPOSED RULE**  
 (Amendment)  
 DAR FILE NO.: 35859  
 FILED: 02/07/2012

### RULE ANALYSIS

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** EPA has made significant changes to its lead-based paint rules, and the Air Quality Board is implementing those changes into this rule to conform with current EPA rules and to retain program delegation from the EPA.

**SUMMARY OF THE RULE OR CHANGE:** The proposed rule amendment reflects changes EPA has made to its lead-based paint rules. Changes include adding more requirements for the accreditation of training programs, including requirements for electronic learning and other alternative course delivery methods for the classroom portion of renovator, dust sampling technician or lead-based paint activities courses. The rule also adds certification requirements for the teaching of hands-on portions of risk assessor, supervisor, abatement worker, renovator, and dust sampling technician disciplines. Requirements are added for training programs to retain records pertaining to lead-based paint activities courses for a minimum of three years and six months and renovator and dust sampling technician courses for a minimum of five years and six months. The rule is amended to add amendment of accreditation requirements for training programs.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Subsection 19-2-104(1)(i)

**ANTICIPATED COST OR SAVINGS TO:**

◆ **THE STATE BUDGET:** Because no new requirements are created that are not already required by the federal government, no costs or savings are anticipated for the state budget.

◆ **LOCAL GOVERNMENTS:** Because no new requirements are created that are not already required by the federal government, no costs or savings are anticipated for local government.

◆ **SMALL BUSINESSES:** Because no new requirements are created that are not already required by the federal government, no costs or savings are anticipated for small businesses.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** Because no new requirements are created that are not already required by the federal government, no costs or savings are anticipated for persons other than small businesses, businesses, or local governments entities.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** Because no new requirements are created that are not already required by the federal government, no costs or savings are anticipated for affected persons.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** Because no new requirements are created that are not already required by the federal government, no cost or savings are anticipated for affected persons.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:  
 ENVIRONMENTAL QUALITY  
 AIR QUALITY  
 FOURTH FLOOR  
 195 N 1950 W  
 SALT LAKE CITY, UT 84116-3085  
 or at the Division of Administrative Rules.

**DIRECT QUESTIONS REGARDING THIS RULE TO:**

◆ Mark Berger by phone at 801-536-4000, by FAX at 801-536-0085, or by Internet E-mail at mberger@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 04/02/2012

THIS RULE MAY BECOME EFFECTIVE ON: 05/03/2012

AUTHORIZED BY: Bryce Bird, Director

**R307. Environmental Quality, Air Quality.**

**R307-842. Lead-Based Paint Activities.**

**R307-842-1. Accreditation of Training Programs: Target Housing and Child-Occupied Facilities.**

(1) Scope.

(a) A training program may seek accreditation to offer courses in any of the following disciplines: inspector, risk assessor, supervisor, project designer, abatement worker, renovator, and dust sampling technician. A training program may also seek accreditation to offer refresher courses for each of the above listed disciplines.

(b) Training programs may apply to the [E]xecutive [S]ecretary for accreditation of their lead-based paint activities courses or refresher courses pursuant to this section. Training programs may apply to the [E]xecutive [S]ecretary for accreditation of their renovator or dust sampling technician courses or refresher courses pursuant to this section.

(c) A training program must not provide, offer, or claim to provide [E]xecutive [S]ecretary-accredited lead-based paint activities courses without applying for and receiving accreditation from the [E]xecutive [S]ecretary as required under paragraph (2) of this section. A training program must not provide, offer, or claim to provide [E]xecutive [S]ecretary-accredited renovator or dust sampling technician courses without applying for and receiving accreditation from the [E]xecutive [S]ecretary as required under paragraph (2) of this section.

(2) Application~~[Accreditation]~~ process. The following are procedures a training program must follow to receive [E]xecutive [S]ecretary accreditation to offer lead-based paint activities courses, renovator courses, or dust sampling technician courses:

(a) A training program seeking accreditation shall submit a written application to the [E]xecutive [S]ecretary containing the following information:

(i) The training program's name, address, and telephone number;

~~[(ii) The appropriate fees in accordance with the current Department of Environmental Quality Fee Schedule;~~

(ii) A list of courses for which it is applying for accreditation. For the purposes of this section, courses taught in different languages and electronic learning courses are considered different courses, and each must independently meet the accreditation requirements;

~~[(iii) The name and documentation of the qualifications of the training program manager [A description of the facilities and equipment to be used for lecture and hands-on training];~~

(iv) The name(s) and documentation of qualifications of any principal instructor(s)~~[A copy of the course test blueprint for each course]; and~~

~~[(v) [A description of the activities and procedures that will be used for conducting the assessment of hands-on skills for each course; and~~

~~[(vi) A copy of the quality control plan as described in paragraph (3)(j) of this section; and~~

~~[(viii) ]~~A statement signed by the training program manager certifying that the training program meets the requirements established in paragraph (3) of this section. If a training program uses EPA-recommended model training materials, the training program manager shall include a statement certifying that, as well; or

(vi) If a training program does not use EPA-recommended model training materials, its application for accreditation shall also include:

(A) A copy of the student and instructor manuals, or other materials to be used for each course;

(B) A copy of the course agenda for each course; and

(C) When applying for accreditation of a course in a language other than English, a signed statement from a qualified, independent translator that they had compared the course to the English language version and found the translation to be accurate;

(vii) All training programs shall include in their application for accreditation the following:

(A) A description of the facilities and equipment to be used for lecture and hands-on training;

(B) A copy of the course test blueprint for each course;

(C) A description of the activities and procedures that will be used for conducting the assessment of hands-on skills for each course; and

(D) A copy of the quality control plan as described in paragraph (3)(i) of this section.

(b) If a training program meets the requirements in paragraph (3) of this section, then the [E]xecutive [S]ecretary shall approve the application for accreditation no more than 180 days after receiving a complete application from the training program. In the case of approval, a certificate of accreditation shall be sent to the applicant. In the case of disapproval, a letter describing the reasons for disapproval shall be sent to the applicant. Prior to disapproval, the [E]xecutive [S]ecretary may, at its discretion, work with the applicant to address inadequacies in the application for accreditation. The [E]xecutive [S]ecretary may also request additional materials retained by the training program under paragraph (8) of this section. If a training program's application is disapproved, the program may reapply for accreditation at any time.~~[; and]~~

(c) A training program may apply for accreditation to offer courses or refresher courses in as many disciplines as it chooses. A training program may seek accreditation for additional courses at any time as long as the program can demonstrate that it meets the requirements of this section.~~[;]~~

(d) A training program applying for accreditation must submit the appropriate fees in accordance with the current Department of Environmental Quality Fee Schedule.

(3) Requirements for the accreditation of training programs. For a training program to obtain accreditation from the [E]xecutive [S]ecretary to offer lead-based paint activities courses, renovator courses, or dust sampling technician courses, the program must meet the following requirements:

(a) The training program shall employ a training manager who has~~[demonstrated experience, education, or training in the construction industry including: lead or asbestos abatement, painting, carpentry, renovation, remodeling, occupational safety and health, or industrial hygiene in addition to one of the following]:~~

(i) At least 2 years of experience, education, or training in teaching workers or adults;~~or~~

(ii) A bachelor's or graduate degree in building construction technology, engineering, industrial hygiene, safety, public health, education, business administration or program management or a related field; or

(iii) Two years of experience in managing a training program specializing in environmental hazards;~~and~~

(iv) Demonstrated experience, education, or training in the construction industry including: lead or asbestos abatement, painting, carpentry, renovation, remodeling, occupational safety and health, or industrial hygiene.

(b) The training manager shall designate a qualified principal instructor for each course who has:

(i) Demonstrated experience, education, or training in teaching workers or adults;~~and~~

(ii) Successfully completed at least 16 hours of any ~~[E]executive [S]ecretary-accredited, EPA-accredited, or EPA-authorized [S]tate or [F]tribal-accredited lead-specific training for instructors of lead-based paint activities courses or 8 hours of any executive secretary-accredited, EPA-accredited or EPA-authorized state or tribal-accredited lead-specific training for instructors of renovator or dust sampling technician courses;~~ and

(iii) Demonstrated experience, education, or training in lead or asbestos abatement, painting, carpentry, renovation, remodeling, occupational safety and health, or industrial hygiene. ~~;~~

(c) The principal instructor shall be responsible for the organization of the course, course delivery, and oversight of the teaching of all course material. The training manager may designate guest instructors as needed for a portion of the course to provide instruction specific to the lecture, hands-on activities, or work practice components of a course. However, the principal instructor is primarily responsible for teaching the course materials and must be present to provide instruction (or oversight of portions of the course taught by guest instructors) for the course for which he or she has been designated the principal instructor. ~~;~~

(d) The following documents shall be recognized by the ~~[E]executive [S]ecretary~~ as evidence that training managers and principal instructors have the education, work experience, training requirements or demonstrated experience, specifically listed in paragraphs (3)(a) and (3)(b) of this section. This documentation must be submitted with the accreditation application and retained by the training program as required by the recordkeeping requirements contained in paragraph (8) of this section. Those documents include the following:

(i) Official academic transcripts or diploma as evidence of meeting the education requirements;

(ii) Resumes, letters of reference, or documentation of work experience, as evidence of meeting the work experience requirements; and

(iii) Certificates from train-the-trainer courses and lead-specific training courses, as evidence of meeting the training requirements. ~~;~~

~~\_\_\_\_\_ (e) The documentation in (d) need not be submitted with the accreditation application, but, if not submitted, shall be retained by the training program as required by the recordkeeping requirements contained in paragraph (8) of this section.~~

~~[~~ (e[f]) The training program shall ensure the availability of, and provide adequate facilities for, the delivery of the lecture, course test, hands-on training, and assessment activities. This includes providing training equipment that reflects current work practices and maintaining or updating the equipment and facilities as needed. ~~;~~

(f[g]) To become accredited in the following disciplines, the training program shall provide training courses that meet the following training ~~[-hour]~~ requirements:

(i) The inspector course shall last a minimum of 24 training hours, with a minimum of 8 hours devoted to hands-on training activities. The minimum curriculum requirements for the inspector course are contained in paragraph (4)(a) of this section;

(ii) The risk assessor course shall last a minimum of 16 training hours, with a minimum of 4 hours devoted to hands-on training activities. The minimum curriculum requirements for the risk assessor course are contained in paragraph (4)(b) of this section;

(iii) The supervisor course shall last a minimum of 32 training hours, with a minimum of 8 hours devoted to hands-on training activities. The minimum curriculum requirements for the supervisor course are contained in paragraph (4)(c) of this section;

(iv) The project designer course shall last a minimum of 8 training hours. The minimum curriculum requirements for the project designer course are contained in paragraph (4)(d) of this section;

(v) The abatement worker course shall last a minimum of 16 training hours, with a minimum of 8 hours devoted to hands-on training activities. The minimum curriculum requirements for the abatement worker course are contained in paragraph (4)(e) of this section;

(vi) The renovator course must last a minimum of 8 training hours, with a minimum of 2 hours devoted to hands-on training activities. The minimum curriculum requirements for the renovator course are contained in paragraph (4)(f) of this section ~~[-Hands-on training activities must cover renovation methods that minimize the creation of dust and lead-based paint hazards, interior and exterior containment and cleanup methods, and post-renovation cleaning verification];~~ and

(vii) The dust sampling technician course must last a minimum of 8 training hours, with a minimum of 2 hours devoted to hands-on training activities. The minimum curriculum requirements for the dust sampling technician course are contained in paragraph (4)(g) of this section. ~~[-Hands-on training activities must cover dust sampling methodologies;]~~

(viii) Electronic learning and other alternative course delivery methods are permitted for the classroom portion of renovator, dust sampling technician, or lead-based paint activities courses but not the hands-on portion of these courses, or for final course tests or proficiency tests described in paragraph (3)(g) of this section. Electronic learning courses must comply with the following requirements:

(A) A unique identifier must be assigned to each student for them to use to launch and re-launch the course;

(B) The training provider must track each student's course log-ins, launches, progress, and completion, and maintain these records in accordance with paragraph (8) of this section;

(C) The course must include periodic knowledge checks equivalent to the number and content of the knowledge checks contained in EPA's model course, but at least 16 over the entire course. The knowledge checks must be successfully completed before the student can go on to the next module;

(D) There must be a test of at least 20 questions at the end of the electronic learning portion of the course, of which 80% must be answered correctly by the student for successful completion of the electronic learning portion of the course. The test must be designed so that students do not receive feedback on their test answers until after they have completed and submitted the test; and

(E) Each student must be able to save or print a copy of an electronic learning course completion certificate. The electronic certificate must not be susceptible to easy editing.

(g[h]) For each course offered, the training program shall conduct either a course test at the completion of the course, and if applicable, a hands-on skills assessment, or in the alternative, a proficiency test for that discipline. Each ~~student~~individual must successfully complete the hands-on skills assessment and receive a

passing score on the course test to pass any course, or successfully complete a proficiency test.

(i) The training manager is responsible for maintaining the validity and integrity of the hands-on skills assessment or proficiency test to ensure that it accurately evaluates the trainees' performance of the work practices and procedures associated with the course topics contained in paragraph (4) of this section;

(ii) The training manager is responsible for maintaining the validity and integrity of the course test to ensure that it accurately evaluates the trainees' knowledge and retention of the course topics; and

(iii) The course test shall be developed in accordance with the test blueprint submitted with the training accreditation application.[:]

(h[†]) The training program shall issue unique course completion certificates to each individual who passes the training course. The course completion certificate shall include:

(i) The name, a unique identification number, and address of the individual;

(ii) The name of the particular course that the individual completed;

(iii) Dates of course completion/test passage;

(iv) For initial inspector, risk assessor, project designer, supervisor, or abatement worker~~[, renovator, or dust sampling technician]~~ course completion certificates, the expiration date of interim certification, which is 6 months from the date of course completion;

(v) The name, address, and telephone number of the training program;

(vi) The language in which the course was taught; and

(vii) For renovator and dust sampling technician course completion certificates, a photograph of the individual. The photograph must be an accurate and recognizable image of the individual. As reproduced on the certificate, the photograph must not be smaller than 1 square inch.[:]

(i[‡]) The training manager shall develop and implement a quality control plan. The plan shall be used to maintain and improve the quality of the training program over time. This plan shall contain at least the following elements:

(i) Procedures for periodic revision of training materials and the course test to reflect innovations in the field; and

(ii) Procedures for the training manager's annual review of principal instructor competency.[:]

(j[‡]) Courses offered by the training program must teach the work practice standards contained in R307-841-5 or R307-842-3, as applicable, in such a manner that trainees are provided with the knowledge needed to perform the renovations or lead-based paint activities they will be~~are~~ responsible for conducting.[:]

(k[†]) The training manager shall be responsible for ensuring that the training program complies at all times with all of the requirements in this section.[:]

(l[‡]) The training manager shall allow the [E]xecutive [S]ecretary or the [E]xecutive [S]ecretary's authorized representative to audit the training program to verify the contents of the application for accreditation as described in paragraph (2) of this section.[:]

(m[‡]) The training manager must provide notification of renovator, dust sampling technician, or lead-based paint activities courses offered.

(i) The training manager must provide the [E]xecutive [S]ecretary with notification of all renovator, dust sampling technician, or lead-based paint activities courses offered. The original notification must be received by the [E]xecutive [S]ecretary at least 7 business days prior to the start date of any renovator, dust sampling technician, or lead-based paint activities course;

(ii) The training manager must provide the [E]xecutive [S]ecretary updated notification when renovator, dust sampling technician, or lead-based paint activities courses will begin on a date other than the start date specified in the original notification, as follows:

(A) For renovator, dust sampling technician, or lead-based paint activities courses beginning prior to the start date provided to the [E]xecutive [S]ecretary, an updated notification must be received by the [E]xecutive [S]ecretary at least 7 business days before the new start date; and

(B) For renovator, dust sampling technician, or lead-based paint activities courses beginning after the start date provided to the [E]xecutive [S]ecretary, an updated notification must be received by the [E]xecutive [S]ecretary at least 2 business days before the start date provided to the [E]xecutive [S]ecretary;

(iii) The training manager must update the [E]xecutive [S]ecretary of any change in location of renovator, dust sampling technician, or lead-based paint activities courses at least 7 business days prior to the start date provided to the [E]xecutive [S]ecretary;

(iv) The training manager must update the [E]xecutive [S]ecretary regarding any course cancellations, or any other change to the original notification. Updated notifications must be received by the [E]xecutive [S]ecretary at least 2 business days prior to the start date provided to the [E]xecutive [S]ecretary;

(v) Each notification, including updates, must include the following:

(A) Notification type (original, update, or cancellation);

(B) Training program name, address, and telephone number;

(C) Course discipline, type (initial/refresher), and the language in which instruction will be given;

(D) Date(s) and time(s) of training;

(E) Training location(s) telephone number, and address;

(F) Principal instructor's name; and

(G) Training manager's name and signature;

(vi) Notification must be accomplished using any of the following methods: Written notification, or electronically using the Utah Division of Air Quality electronic notification system. Written notification of renovator, dust sampling technician, or lead-based paint activities course schedules can be accomplished by using either the sample form titled "Renovator, Dust Sampling Technician, or Lead-Based Paint Activities Training Course Notification Form" or a similar form containing the information required in paragraph (3)(m[‡])(v) of this section. All written notifications must be delivered to the executive secretary by United States Postal Service, fax, commercial delivery service, or hand delivery~~[ on or before the applicable date]~~. Instructions and sample forms can be obtained from the Utah Division of Air Quality Lead-Based Paint Program web site;

(vii) Renovator, dust sampling technician, or ~~[[F]lead-based paint activities courses~~ must not begin on a date, or at a location other than that specified in the original notification unless an updated notification identifying a new start date or location is submitted, in which case the course must begin on the new start date and/or location specified in the updated notification; and

(viii) No training program shall provide renovator, dust sampling technician, or lead-based paint activities courses without first notifying the ~~[E]executive~~ ~~[S]secretary~~ of such activities in accordance with the requirements of this paragraph.

~~[n[ø]]~~ The training manager must provide notification following completion of renovator, dust sampling technician, or lead-based paint activities courses.

(i) The training manager must provide the ~~[E]executive~~ ~~[S]secretary~~ notification after the completion of any renovator, dust sampling technician, or lead-based paint activities course. This notice must be received by the ~~[E]executive~~ ~~[S]secretary~~ no later than 10 business days following the course completion;

(ii) The notification must include the following:

(A) Training program name, address, and telephone number;

(B) Course discipline and type (initial/refresher);

(C) Date(s) of training;

(D) The following information for each student who took the course:

(I) Name,

(II) Address,

(III) Date of birth,

(IV) Course completion certificate number,

(V) Course test score, and

(VI) For renovator or dust sampling technician courses ~~only~~, a digital photograph of the student;

(E) Training manager's name and signature; and

(F) Utah Division of Air Quality Lead-Based Paint Program training verification statement; and

(iii) Notification must be accomplished using any of the following methods: Written notification, or electronically using the Utah Division of Air Quality electronic notification system. Written notification following renovator, dust sampling technician, or lead-based paint activities training courses can be accomplished by using either the sample form titled "Renovator, Dust Sampling Technician, or Lead-Based Paint Activities Training Course Notification Form" or a similar form containing the information required in paragraph (3)~~[n[ø]]~~(ii) of this section. All written notifications must be delivered to the executive secretary by United States Postal Service, fax, commercial delivery service, or hand delivery ~~on or before the applicable date~~. Instructions and sample forms can be obtained from the Utah Division of Air Quality Lead-Based Paint Program web site.

(4) Minimum training curriculum requirements. To become accredited to offer lead-based paint courses ~~[instruction]~~ in the specific disciplines listed in this paragraph ~~below~~, training programs must ensure that their courses of study include, at a minimum, the following course topics.

(a) Inspector. Instruction in the topics described in paragraphs (4)(a)(iv), (v), (vi), and (vii) of this section must be included in the hands-on portion of the course.

(i) Role and responsibilities of an inspector;~~;~~

(ii) Background information on lead and its adverse health effects.

(iii) Background information on ~~[F]federal, [S]state,~~ and local regulations and guidance that pertains to lead-based paint and lead-based paint activities.

(iv) Lead-based paint inspection methods, including selection of rooms and components for sampling or testing.

(v) Paint, dust, and soil sampling methodologies.

(vi) Clearance standards and testing, including random sampling.

(vii) Preparation of the final inspection report.

(viii) Recordkeeping.

~~[ ——— (ix) Items (iv) through (viii) require hands-on activities as an integral component of the course. ]~~

(b) Risk assessor. Instruction in the topics described in paragraphs (4)(b)(iv), (vi), and (vii) of this section must be included in the hands-on portion of the course.

(i) Role and responsibilities of a risk assessor.

(ii) Collection of background information to perform a risk assessment.

(iii) Sources of environmental lead contamination such as paint, surface dust and soil, water, air, packaging, and food.

(iv) Visual inspection for the purposes of identifying potential sources of lead-based paint hazards.

(v) Lead hazard screen protocol.

(vi) Sampling for other sources of lead exposure.

(vii) Interpretation of lead-based paint and other lead sampling results, including all applicable federal or ~~[S]state~~ ~~or Federal~~ guidance or regulations pertaining to lead-based paint hazards.

(viii) Development of hazard control options, the role of interim controls, and operations and maintenance activities to reduce lead-based paint hazards.

(ix) Preparation of a final risk assessment report.

~~[ ——— (x) Items (iv), (vi), and (vii) require hands-on activities as an integral component of the course. ]~~

(c) Supervisor. Instruction in the topics described in paragraphs (4)(c)(v), (vii), (viii), (ix), and (x) of this section must be included in the hands-on portion of the course.

(i) Role and responsibilities of a supervisor.

(ii) Background information on lead and its adverse health effects.

(iii) Background information on ~~[F]federal, [S]state,~~ and local regulations and guidance that pertain to lead-based paint abatement.

(iv) Liability and insurance issues relating to lead-based paint abatement.

(v) Risk assessment and inspection report interpretation.

(vi) Development and implementation of an occupant protection plan and abatement report.

(vii) Lead-based paint hazard recognition and control.

(viii) Lead-based paint abatement and lead-based paint hazard reduction methods, including restricted practices.

(ix) Interior dust abatement/cleanup or lead-based paint hazard control and reduction methods.

(x) Soil and exterior dust abatement or lead-based paint hazard control and reduction methods.

(xi) Clearance standards and testing.

(xii) Cleanup and waste disposal.  
 (xiii) Recordkeeping.  
~~[(xiv) Items (v), and (vii) through (x) require hands-on activities as an integral component of the course.]~~  
 (d) Project designer.  
 (i) Role and responsibilities of a project designer.  
 (ii) Development and implementation of an occupant protection plan for large[-]-scale abatement projects.  
 (iii) Lead-based paint abatement and lead-based paint hazard reduction methods, including restricted practices for large-scale abatement projects.  
 (iv) Interior dust abatement/cleanup or lead hazard control and reduction methods for large-scale abatement projects.  
 (v) Clearance standards and testing for large scale abatement projects.  
 (vi) Integration of lead-based paint abatement methods with modernization and rehabilitation projects for large scale abatement projects.  
 (e) Abatement worker. Instruction in the topics described in paragraphs (4)(e)(iv), (v), (vi), and (vii) of this section must be included in the hands-on portion of the course.  
 (i) Role and responsibilities of an abatement worker.  
 (ii) Background information on lead and its adverse health effects.  
 (iii) Background information on [F]federal, [S]state, and local regulations and guidance that pertain to lead-based paint abatement.  
 (iv) Lead-based paint hazard recognition and control.  
 (v) Lead-based paint abatement and lead-based paint hazard reduction methods, including restricted practices.  
 (vi) Interior dust abatement methods/cleanup or lead-based paint hazard reduction.  
 (vii) Soil and exterior dust abatement methods or lead-based paint hazard reduction.  
~~[(viii) Items (iv) through (vii) require hands-on activities as an integral component of the course.]~~  
 (f) Renovator. Instruction in the topics described in paragraphs (4)(f)(iv), (vi), (vii), and (viii) of this section must be included in the hands-on portion of the course.  
 (i) Role and responsibility of a renovator.  
 (ii) Background information on lead and its adverse health effects.  
 (iii) Background information on EPA, HUD, OSHA, and other [F]federal, [S]state, and local regulations and guidance that pertain to lead-based paint and renovation activities.  
 (iv) Procedures for using acceptable test kits to determine whether paint is lead-based paint.  
 (v) Procedures for collecting a paint chip sample and sending it to a laboratory recognized by EPA under section 405(b) of TSCA.  
 (vi) Renovation methods to minimize the creation of dust and lead-based paint hazards.  
 (vii) Interior and exterior containment and cleanup methods.  
 (viii) Methods to ensure that the renovation has been properly completed, including cleaning verification, and clearance testing.  
 (ix) Waste handling and disposal.  
 (x) Providing on-the-job training to other workers.

(xi) Record preparation.  
 (g) Dust sampling technician. Instruction in the topics described in paragraphs (4)(g)(iv) and (vi) of this section must be included in the hands-on portion of the course.  
 (i) Role and responsibility of a dust sampling technician.  
 (ii) Background information on lead and its adverse health effects.  
 (iii) Background information on [F]federal, [S]state, and local regulations and guidance that pertain to lead-based paint and renovation activities.  
 (iv) Dust sampling methodologies.  
 (v) Clearance standards and testing.  
 (vi) Report preparation.  
 (5) Requirements for the accreditation of refresher training programs. A training program may seek accreditation to offer refresher training courses in any of the following disciplines: [i]nspector, risk assessor, supervisor, project designer, abatement worker, renovator, and dust sampling technician. To obtain [E]xecutive [S]ecretary accreditation to offer refresher training, a training program must meet the following minimum requirements:  
 (a) Each refresher course shall review the curriculum topics of the full-length courses listed under paragraph (4) of this section, as appropriate. In addition, to become accredited to offer refresher training courses, training programs shall ensure that their courses of study include, at a minimum, the following:  
 (i) An overview of current safety practices relating to lead-based paint in general, as well as specific information pertaining to the appropriate discipline;  
 (ii) Current laws and regulations relating to lead-based paint in general, as well as specific information pertaining to the appropriate discipline; and  
 (iii) Current technologies relating to lead-based paint in general, as well as specific information pertaining to the appropriate discipline;  
 (b) Refresher courses for inspector, risk assessor, supervisor, and abatement worker must last a minimum of 8 training hours. Refresher courses for project designer, renovator, and dust sampling technician must last a minimum of 4 training hours. Refresher courses for all disciplines except project designer must include a hands-on component;  
 (c) Except for project designer courses, for all other courses~~For each course~~ offered, the training program shall conduct a hands-on assessment~~[(if applicable)]~~, and at the completion of the course, a course test;  
 (d) A training program may apply for accreditation of a refresher course concurrently with its application for accreditation of the corresponding training course as described in paragraph (2) of this section. If so, the [E]xecutive [S]ecretary shall use the approval procedure described in paragraph (2) of this section. In addition, the minimum requirements contained in paragraphs (3)(a) through (3)(e) and (3)(g) through (3)(n), and (5)(a) through (5)(c) of this section shall also apply~~[(except for the requirements in paragraph (3)(g)), and (5)(a), (5)(b), and (5)(c) of this section shall also apply];~~ and  
 (e) A training program seeking accreditation to offer refresher training courses only shall submit a written application to the [E]xecutive [S]ecretary containing the following information:  
 (i) The refresher training program's name, address, and telephone number;

(ii) A list of courses for which it is applying for accreditation;

(iii) The name and documentation of the qualifications of the training program manager;

(iv) The name(s) and documentation of the qualifications of the principal instructor(s);

(v) A statement signed by the training program manager certifying that the refresher training program meets the minimum requirements established in paragraph (3) of this section, except for the requirements in paragraph (3)(f)(g) of this section. If a training program uses EPA-developed model training materials, the training manager shall include a statement certifying that, as well;

(i) If the refresher training course materials are not based on EPA-developed model training materials, the training program's application for accreditation shall include:

(A) A copy of the student and instructor manuals to be used for each course; and

(B) A copy of the course agenda for each course;

(ii) All refresher training programs shall include in their application for accreditation the following:

(A) A description of the facilities and equipment to be used for lecture and hands-on training;

(B) A copy of the course test blueprint for each course;

(C) A description of the activities and procedures that will be used for conducting the assessment of hands-on skills for each course (if applicable); and

(D) A copy of the quality control plan as described in paragraph (3)(i)(j) of this section;

(iii) The requirements in paragraphs (3)(a) through (3)(e)(f), and (3)(g)(h) through (3)(n)(o) of this section apply to refresher training providers; and

(iv) If a refresher training program meets the requirements listed in this paragraph, then the [E]xecutive [S]ecretary shall approve the application for accreditation no more than 180 days after receiving a complete application from the refresher training program. In the case of approval, a certificate of accreditation shall be sent to the applicant. In the case of disapproval, a letter describing the reasons for disapproval shall be sent to the applicant. Prior to disapproval, the [E]xecutive [S]ecretary may, at the executive secretary's discretion, work with the applicant to address inadequacies in the application for accreditation. The [E]xecutive [S]ecretary may also request additional materials retained by the refresher training program under paragraph (8) of this section. If a refresher training program's application is disapproved, the program may reapply for accreditation at any time.

(6) Re-accreditation of training programs.

(a) Unless re-accredited, a training program's accreditation, [including refresher training accreditation,] shall expire 4 years after the date of issuance. If a training program meets the requirements of this section, the training program shall be re-accredited.

(b) A training program seeking re-accreditation shall submit an application to the [E]xecutive [S]ecretary no later than 180 days before its accreditation expires. If a training program does not submit its application for re-accreditation by that date, the [E]xecutive [S]ecretary cannot guarantee that the program will be re-accredited before the end of the accreditation period.

(c) The training program's application for re-accreditation shall contain:

(i) The training program's name, address, and telephone number;

(ii) A list of courses for which it is applying for re-accreditation;

(iii) The name and qualifications of the training program manager;

(iv) The name(s) and qualifications of the principal instructor(s);

(v) A description of any changes to the training facility, equipment or course materials since its last application was approved that adversely affects the students' ability to learn;

(i) A statement signed by the program manager stating:

(A) That the training program complies at all times with all requirements in paragraphs (3) and (5) of this section, as applicable; and

(B) The recordkeeping and reporting requirements of paragraph (8) of this section shall be followed; and

(ii) A payment of appropriate fees in accordance with the current Department of Environmental Quality Fee Schedule.

(d) Upon request, the training program shall allow the [E]xecutive [S]ecretary or the [E]xecutive [S]ecretary's authorized representative to audit the training program to verify the contents of the application for re-accreditation as described in paragraph (6)(c) of this section.

(7) Suspension, revocation, and modification of accredited training programs.

(a) The [E]xecutive [S]ecretary may, after notice and an opportunity, for hearing, suspend, revoke, or modify training program accreditation, [including refresher training accreditation,] if a training program, training manager, or other person with supervisory authority over the training program has:

(i) Misrepresented the contents of a training course to the [E]xecutive [S]ecretary and/or the student population;

(ii) Failed to submit required information or notifications in a timely manner;

(iii) Failed to maintain required records;

(iv) Falsified accreditation records, instructor qualifications, or other accreditation-related information or documentation;

(v) Failed to comply with the training standards and requirements in this section;

(vi) Failed to comply with [F]ederal, [S]tate, or local lead-based paint statutes or regulations; or

(vii) Made false or misleading statements to the [E]xecutive [S]ecretary in its application for accreditation or re-accreditation which the [E]xecutive [S]ecretary relied upon in approving the application.

(b) In addition to an administrative or judicial finding of violation, execution of a consent agreement in settlement of an enforcement action constitutes, for purposes of this section, evidence of a failure to comply with relevant statutes or regulations.

(8) Training program recordkeeping requirements.

(a) Accredited training programs shall maintain, and make available to the [E]xecutive [S]ecretary or the [E]xecutive [S]ecretary's authorized representative, upon request, the following records:

(i) All documents specified in paragraph (3)(d) of this section that demonstrate the qualifications listed in paragraphs (3)(a) and (3)(b) of this section of the training manager and principal instructors;

(ii) Current curriculum/course materials and documents reflecting any changes made to these materials;

(iii) The course test blueprint;

(iv) Information regarding how the hands-on assessment is conducted including, but not limited to:

(A) Who conducts the assessment;

(B) How the skills are graded;

(C) What facilities are used; and

(D) The pass/fail rate;

(v) The quality control plan as described in paragraph (3)(i) of this section;

(vi) Results of the students' hands-on skills assessments and course tests, and a record of each student's course completion certificate; ~~and~~

(vii) Any other material not listed ~~above~~ in paragraphs (8)(a)(i) through (8)(a)(vi) of this section that was submitted to the [E]xecutive [S]ecretary as part of the program's application for accreditation.

(viii) For renovator refresher and dust sampling technician refresher courses, a copy of each trainee's prior course completion certificate showing that each trainee was eligible to take the refresher course; and

(ix) For course modules delivered in an electronic format, a record of each student's log-ins, launches, progress, and completion, and a copy of the electronic learning completion certificate for each student.

(b) The training program must retain records pertaining to renovator, dust sampling technician and lead-based paint activities courses ~~shall retain these records~~ at the address specified on the training program accreditation application (or as modified in accordance with paragraph (8)(c) of this section) ~~for a minimum of 3 years and 6 months~~ for the following minimum periods:

(i) Records pertaining to lead-based paint activities courses must be retained for a minimum of 3 years and 6 months;

(ii) Records pertaining to renovator or dust sampling technician courses offered must be retained for a minimum of 5 years and 6 months.

(c) The training program shall notify the [E]xecutive [S]ecretary in writing within 30 days of changing the address specified on its training program accreditation application or transferring the records from that address.

(9) Amendment of accreditation.

(1) A training program must amend its accreditation within 90 days of the date a change occurs to information included in the program's most recent application. If the training program fails to amend its accreditation within 90 days of the date the change occurs, the program may not provide renovator, dust sampling technician, or lead-based paint activities training until its accreditation is amended.

(2) To amend an accreditation, a training program must submit a completed Division of Air Quality Lead-Based Paint Application for Course Accreditation, signed by an authorized agent of the training provider, noting on the form that it is submitted as an amendment and indicating the information that has changed.

(3) Training managers, principal instructors, permanent training locations. If the amendment includes a new training program manager, any new or additional principal instructor(s), or any new permanent training location(s), the training provider is not permitted to provide training under the new training manager or offer courses taught by any new principal instructor(s) or at the new training location(s) until the executive secretary either approves the amendment or 30 days have elapsed, whichever occurs earlier. Except:

(i) If the amendment includes a new training program manager or new or additional principal instructor that was identified in a training provider accreditation application that the executive secretary has already approved under this section, the training provider may begin to provide training under the new training manager or offer courses taught by the new principal instructor on an interim basis as soon as the provider submits the amendment to the executive secretary. The training provider may continue to provide training under the new training manager or offer courses taught by the new principal instructor if the executive secretary approves the amendment or if the executive secretary does not disapprove the amendment within 30 days.

(ii) If the amendment includes a new permanent training location, the training provider may begin to provide training at the new permanent training location on an interim basis as soon as the provider submits the amendment to the executive secretary. The training provider may continue to provide training at the new permanent training location if the executive secretary approves the amendment or if the executive secretary does not disapprove the amendment within 30 days.

### **R307-842-2. Certification of Individuals and Firms Engaged in Lead-Based Paint Activities: Target Housing and Child-Occupied Facilities.**

(1) Certification of individuals.

(a) Individuals seeking certification by the [E]xecutive [S]ecretary to engage in lead-based paint activities must either:

(i) Submit to the [E]xecutive [S]ecretary an application demonstrating that they meet the requirements established in paragraphs (2) or (3) of this section for the particular discipline for which certification is sought; or

(ii) Submit to the [E]xecutive [S]ecretary an application with a copy of a valid lead-based paint activities certification (or equivalent) from the EPA or a [S]tate or [F]tribal program that has been authorized by EPA pursuant to subpart Q of 40 CFR 745[-]; or

(iii) For supervisor, inspector, and/or risk assessor certification, submit to the executive secretary an application with a copy of a valid lead-based paint training certificate from an EPA-accredited, or EPA-authorized state or tribal-accredited lead-specific training in the appropriate discipline and pass the certification exam in the appropriate discipline offered by the executive secretary.

(b) Following the submission of an application demonstrating that all the requirements of this section have been met, the [E]xecutive [S]ecretary shall certify an applicant as an inspector, risk assessor, supervisor, project designer, or abatement worker, as appropriate.

(c) Upon receiving [E]xecutive [S]ecretary certification, individuals conducting lead-based paint activities shall comply with the work practice standards for performing the

appropriate lead-based paint activities as established in R307-842-3[2].

(d) It shall be a violation of [S]state [A]administrative [R]rules for an individual to conduct any of the lead-based paint activities described in R307-842-3[2] if that individual has not been certified by the [E]executive [S]secretary pursuant to this section to do so.

(e) Individuals applying for certification must submit the appropriate fees in accordance with the current Department of Environmental Quality Fee Schedule. ~~[-The individual certification fee for a Lead-Based Paint Renovator shall be \$150.00 per year. The individual certification fee for a Lead-Based Paint Dust Sampling Technician shall be \$100.00 per year.]~~

(2) Inspector, risk assessor or supervisor.

(a) To become certified by the [E]executive [S]secretary as an inspector, risk assessor, or supervisor, pursuant to paragraph (1)(a)(i) of this section, an individual must:

(i) Successfully complete an accredited course in the appropriate discipline and receive a course completion certificate from an accredited training program;

(ii) Pass the certification exam in the appropriate discipline offered by the [E]executive [S]secretary; and

(iii) Meet or exceed the following experience and/or education requirements:

(A) Inspectors. No additional experience and/or education requirements;

(B) Risk assessors.

~~(I) S[Risk assessors must have s]uccessful completion of an accredited training course for inspectors; and in addition to one of the following:]~~

(II) Bachelor's degree and 1 year of experience in a related field (e.g., lead, asbestos, environmental remediation work, or construction), or an Associates degree and 2 years experience in a related field (e.g., lead, asbestos, environmental remediation work, or construction); or

(III) Certification as an industrial hygienist, professional engineer, registered architect and/or certification in a related engineering/health/environmental field (e.g., safety professional, environmental scientist); or

~~(H)IV) A high school diploma (or equivalent), and at least 3 years of experience in a related field (e.g., lead, asbestos, environmental remediation work or construction); and]~~

(C) Supervisor. [:]

(I) One year of experience as a certified lead-based paint abatement worker; or

(II) At least 2 years of experience in a related field (e.g., lead, asbestos, or environmental remediation work) or in the building trades.

(b) The following documents shall be recognized by the [E]executive [S]secretary as evidence of meeting the requirements listed in (2)(b)(iii) of this paragraph:

(i) Official academic transcripts or diploma, as evidence of meeting the education requirements;

(ii) Resumes, letters of reference, or documentation of work experience, as evidence of meeting the work experience requirements; and

(iii) Course completion certificates from lead-specific or other related training courses, issued by accredited training programs, as evidence of meeting the training requirements.

(c) In order to take the certification examination for a particular discipline an individual must:

(i) Successfully complete an accredited course in the appropriate discipline and receive a course completion certificate from an accredited training program; and

(ii) Meet or exceed the education and/or experience requirements in paragraph (2)(a)(iii) of this section.

(d) The course completion certificate shall serve as interim certification for an individual until the next available opportunity to take the certification exam. Such interim certification shall expire 6 months after issuance.

(e) After passing the appropriate certification exam and submitting an application demonstrating that he/she meets the appropriate training, education, and/or experience prerequisites described in paragraph (2)(a) of this section, an individual shall be issued a certificate by the [E]executive [S]secretary. To maintain certification, an individual must be re-certified as described in paragraph (4) of this section.

(f) An individual may take the certification exam no more than three times within 6 months of receiving a course completion certificate.

(g) If an individual does not pass the certification exam and receive a certificate within 6 months of receiving his/her course completion certificate, the individual must retake the appropriate course from an accredited training program before reapplying for certification from the [E]executive [S]secretary.

(3) Abatement worker and project designer.

(a) To become certified by the [E]executive [S]secretary as an abatement worker or project designer, pursuant to paragraph (1)(a)(i) of this section, an individual must:

(i) Successfully complete an accredited course in the appropriate discipline and receive a course completion certificate from an accredited training program; and

(ii) Meet or exceed the following additional experience and/or education requirements:

(A) Abatement workers. No additional experience and/or education requirements; and

(B) Project designers.

(I) Successful completion of an accredited training course for supervisors;

(II) Bachelor's degree in engineering, architecture, or a related profession, and 1 year of experience in building construction and design or a related field; or

(III) Four years of experience in building construction and design or a related field.

(b) The following documents shall be recognized by the [E]executive [S]secretary as evidence of meeting the requirements listed in this paragraph:

(i) Official academic transcripts or diploma, as evidence of meeting the education requirements;

(ii) Resumes, letters of reference, or documentation of work experience, as evidence of meeting the work experience requirements; and

(iii) Course completion certificates from lead-specific or other related training courses, issued by accredited training programs, as evidence of meeting the training requirements.

(c) The course completion certificate shall serve as an interim certification until certification from the [E]executive

[S]ecretary is received, but shall be valid for no more than 6 months from the date of completion.

(d) After successfully completing the appropriate training courses and meeting any other qualifications described in paragraph (3)(a) of this section, an individual shall be issued a certificate from the [E]xecutive [S]ecretary. To maintain certification, an individual must be re-certified as described in paragraph (4) of this section.

(4) Re-certification.

(a) To maintain certification in a particular discipline, a certified individual shall apply to and be re-certified by the [E]xecutive [S]ecretary in that discipline by the [E]xecutive [S]ecretary either:

(i) Every 3 years if the individual completed a training course with a course test and hands-on assessment; or

(ii) Every 5 years if the individual completed a training course with a proficiency test.

(b) An individual shall be re-certified if the individual successfully completes the appropriate accredited refresher training course and submits a valid copy of the appropriate refresher course completion certificate. If more than 3 years but less than 4 years have passed since certification or re-certification for an individual that completed an initial or a refresher training course with a course test and hands-on assessment, or if more than 5 years but less than 6 years have passed since certification or re-certification for an individual that completed an initial or a refresher training course with a proficiency test for the supervisor, inspector, and/or risk assessor disciplines, then the individual must also pass the certification exam in the appropriate discipline offered by the executive secretary.

(c) Individuals applying for re-certification must submit the appropriate fees in accordance with the current Department of Environmental Quality Fee Schedule. ~~—The individual re-certification fee for a Lead-Based Paint Renovator shall be \$150.00 per year. The individual re-certification fee for a Lead-Based Paint Dust Sampling Technician shall be \$100.00 per year.~~

(5) Certification of firms.

(a) All firms which perform or offer to perform any of the lead-based paint activities or renovations described in R307-842-3 shall be certified by the [E]xecutive [S]ecretary.

(b) A firm seeking certification shall submit to the [E]xecutive [S]ecretary a letter attesting that the firm shall only employ appropriately certified employees to conduct lead-based paint activities, and that the firm and its employees shall follow the work practice standards in R307-842-3 for conducting lead-based paint activities.

(c) From the date of receiving the firm's letter requesting certification, the [E]xecutive [S]ecretary shall have 90 days to approve or disapprove the firm's request for certification. Within that time, the [E]xecutive [S]ecretary shall respond with either a certificate of approval or a letter describing the reasons for disapproval.

(d) The firm shall maintain all records pursuant to the requirements in R307-842-3.

(e) Firms may apply to the [E]xecutive [S]ecretary for certification to engage in lead-based paint activities pursuant to this section.

(f) Firms applying for certification must submit the appropriate fees in accordance with the current Department of

Environmental Quality Fee Schedule. ~~—The firm certification fee for a Lead-Based Paint Renovator Firm and/or Dust Sampling Technician Firm shall be \$200.00 per year.~~

(g) To maintain certification a firm shall submit appropriate fees in accordance with the current Department of Environmental Quality Fee Schedule. ~~—The firm re-certification fee for a Lead-Based Paint Renovator Firm and/or Dust Sampling Technician Firm shall be \$200.00 per year.~~

(6) Suspension, revocation, and modification of certifications of individuals engaged in lead-based paint activities.

(a) The [E]xecutive [S]ecretary may, after notice and opportunity for hearing, suspend, revoke, or modify an individual's certification if an individual has:

(i) Obtained training documentation through fraudulent means;

(ii) Gained admission to and completed an accredited training program through misrepresentation of admission requirements;

(iii) Obtained certification through misrepresentation of certification requirements or related documents dealing with education, training, professional registration, or experience;

(iv) Performed work requiring certification at a job site without having proof of certification;

(v) Permitted the duplication or use of the individual's own certificate by another;

(vi) Performed work for which certification is required, but for which appropriate certification has not been received;

(vii) Failed to comply with the appropriate work practice standards for lead-based paint activities at R307-842-3; or

(viii) Failed to comply with [F]ederal, [S]tate, or local lead-based paint statutes or regulations.

(b) In addition to an administrative or judicial finding of violation, for purposes of this section only, execution of a consent agreement in settlement of an enforcement action constitutes evidence of a failure to comply with relevant statutes or regulations.

(7) Suspension, revocation, and modification of certifications of firms engaged in lead-based paint activities.

(a) The [E]xecutive [S]ecretary may, after notice and opportunity for hearing, suspend, revoke, or modify a firm's certification if a firm has:

(i) Performed work requiring certification at a job site with individuals who are not certified;

(ii) Failed to comply with the work practice standards established in R307-842-3;

(iii) Misrepresented facts in its letter of application for certification to the [E]xecutive [S]ecretary;

(iv) Failed to maintain required records; or

(v) Failed to comply with [F]ederal, [S]tate, or local lead-based paint statutes or regulations.

(b) In addition to an administrative or judicial finding of violation, for purposes of this section only, execution of a consent agreement in settlement of an enforcement action constitutes evidence of a failure to comply with relevant statutes or regulations.

**R307-842-3. Work Practice Standards for Conducting Lead-Based Paint Activities: Target Housing and Child-Occupied Facilities.**

(1) Effective date, applicability, and terms.

(a) All lead-based paint activities shall be performed pursuant to the work practice standards contained in this section.

(b) When performing any lead-based paint activity described by the certified individual as an inspection, lead-hazard screen, risk assessment, or abatement, a certified individual must perform that activity in compliance with the appropriate requirements below.

(c) Documented methodologies that are appropriate for this section are found in the following: the HUD Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing, the EPA Guidance on Residential Lead-Based Paint, Lead-Contaminated Dust, and Lead-Contaminated Soil, the EPA Residential Sampling for Lead: Protocols for Dust and Soil Sampling (EPA report number 7474-R-95-001), and other equivalent methods and guidelines.

(d) Clearance levels are appropriate for the purposes of this section may be found in the EPA Guidance on Residential Lead-Based Paint, Lead-Contaminated Dust, and Lead Contaminated Soil or other equivalent guidelines.

(2) Inspection.

(a) An inspection shall be conducted only by a person certified by the [E]xecutive [S]ecretary as an inspector or risk assessor and, if conducted, must be conducted according to the procedures in this paragraph.

(b) When conducting an inspection, the following locations shall be selected according to documented methodologies and tested for the presence of lead-based paint:

(i) In a residential dwelling and child-occupied facility, each component with a distinct painting history and each exterior component with a distinct painting history shall be tested for lead-based paint, except those components that the inspector or risk assessor determines to have been replaced after 1978, or to not contain lead-based paint; and

(ii) In a multi-family dwelling or child-occupied facility, each component with a distinct painting history in every common area, except those components that the inspector or risk assessor determines to have been replaced after 1978, or to not contain lead-based paint.

(c) Paint shall be sampled in the following manner:

(i) The analysis of paint to determine the presence of lead shall be conducted using documented methodologies which incorporate adequate quality control procedures; and/or

(ii) All collected paint chip samples shall be analyzed according to paragraph (6) of this section to determine if they contain detectable levels of lead that can be quantified numerically.

(d) The certified inspector or risk assessor shall prepare an inspection report which shall include the following information:

(i) Date of each inspection;

(ii) Address of building;

(iii) Date of construction;

(iv) Apartment numbers (if applicable);

(v) Name, address, and telephone number of the owner or owners of each residential dwelling or child-occupied facility;

(vi) Name, signature, and certification number of each certified inspector and/or risk assessor conducting testing;

(vii) Name, address, and telephone number of the certified firm employing each inspector and/or risk assessor, if applicable;

(viii) Each testing method and device and/or sampling procedure employed for paint analysis, including quality control data and, if used, the serial number of any x-ray fluorescence (XRF) device;

(ix) Specific locations of each painted component tested for the presence of lead-based paint; and

(x) The results of the inspection expressed in terms appropriate to the sampling method used.

(3) Lead hazard screen.

(a) A lead hazard screen shall be conducted only by a person certified by the [E]xecutive [S]ecretary as a risk assessor.

(b) If conducted, a lead hazard screen shall be conducted as follows:

(i) Background information regarding the physical characteristics of the residential dwelling or child-occupied facility and occupant use patterns that may cause lead-based paint exposure to one or more children age 6 years and under shall be collected;

(ii) A visual inspection of the residential dwelling or child-occupied facility shall be conducted to:

(A) Determine if any deteriorated paint is present; and

(B) Locate at least two dust sampling locations;

(iii) If deteriorated paint is present, each surface with deteriorated paint, which is determined, using documented methodologies, to be in poor condition and to have a distinct painting history, shall be tested for the presence of lead;

(iv) In residential dwellings, two composite dust samples shall be collected, one from the floors and the other from the windows, in rooms, hallways, or stairwells where one or more children, age 6 and under, are most likely to come in contact with dust; and

(v) In multi-family dwellings and child-occupied facilities, in addition to the floor and window samples required in paragraph (3)(b)(iv) of this section, the risk assessor shall also collect composite dust samples from common areas where one or more children, age 6 and under, are most likely to come into contact with dust.

(c) Dust samples shall be collected and analyzed in the following manner:

(i) All dust samples shall be taken using documented methodologies that incorporate adequate quality control procedures; and

(ii) All collected dust samples shall be analyzed according to paragraph (6) of this section to determine if they contain detectable levels of lead that can be quantified numerically.

(d) Paint shall be sampled in the following manner:

(i) The analysis of paint to determine the presence of lead shall be conducted using documented methodologies which incorporate adequate quality control procedures; and/or

(ii) All collected paint chip samples shall be analyzed according to paragraph (6) of this section to determine if they contain detectable levels of lead that can be quantified numerically.

(e) The risk assessor shall prepare a lead hazard screen report, which shall include the following information:

(i) The information required in a risk assessment report as specified in paragraph (4) of this section, including paragraphs (4)(k)(i) through (4)(k)(xiv), and excluding paragraphs (4)(k)(xv) through (4)(k)(xviii) of this section. Additionally, any background information collected pursuant to paragraph (3)(b)(i) of this section

shall be included in the lead hazard screen~~[risk assessment]~~ report; and

(ii) Recommendations, if warranted, for a follow-up risk assessment, and as appropriate, any further actions.

(4) Risk assessment.

(a) A risk assessment shall be conducted only by a person certified by the ~~[E]~~executive ~~[S]~~secretary as a risk assessor and, if conducted, must be conducted according to the procedures in this paragraph.

(b) A visual inspection for risk assessment of the residential dwelling or child-occupied facility shall be undertaken to locate the existence of deteriorated paint, assess the extent and causes of the deterioration, and other potential lead-based paint hazards.

(c) Background information regarding the physical characteristics of the residential dwelling or child-occupied facility and occupant use patterns that may cause lead-based paint exposure to one or more children age 6 years and under shall be collected.

(d) The following surfaces which are determined, using documented methodologies, to have a distinct painting history, shall be tested for the presence of lead:

(i) Each friction surface or impact surface with visibly deteriorated paint; and

(ii) All other surfaces with visibly deteriorated paint.

(e) In residential dwellings, dust samples (either composite or single-surface samples) from the interior window sill(s) and floor shall be collected and analyzed for lead concentration in all living areas where one or more children, age 6 and under, are most likely to come into contact with dust.

(f) For multi-family dwellings and child-occupied facilities, the samples required in paragraph (4)(d) of this section shall be taken. In addition, interior window sill and floor dust samples (either composite or single-surface samples) shall be collected and analyzed for lead concentration in the following locations:

(i) Common areas adjacent to the sampled residential dwelling or child-occupied facility; and

(ii) Other common areas in the building where the risk assessor determines that one or more children, age 6 and under, are likely to come into contact with dust.

(g) For child-occupied facilities, interior window sill and floor dust samples (either composite or single-surface samples) shall be collected and analyzed for lead concentration in each room, hallway, or stairwell utilized by one or more children, age 6 and under, and in other common areas in the child-occupied facility where one or more children, age 6 and under, are likely to come into contact with dust.

(h) Soil samples shall be collected and analyzed for lead concentrations in the following locations:

(i) Exterior play areas where bare soil is present;~~and~~

(ii) The rest of the yard (i.e., non-play areas) where bare soil is present;~~and~~~~[-]~~

(iii) Dripline/foundation areas where bare soil is present.

(i) Any paint, dust, or soil sampling or testing shall be conducted using documented methodologies that incorporate adequate quality control procedures.

(j) Any collected paint chip, dust, or soil samples shall be analyzed according to paragraph (6) of this section to determine if

they contain detectable levels of lead that can be quantified numerically.

(k) The certified risk assessor shall prepare a risk assessment report which shall include the following information:

(i) Date of assessment;

(ii) Address of each building;

(iii) Date of construction of buildings;

(iv) Apartment number (if applicable);

(v) Name, address, and telephone number of each owner of each building;

(vi) Name, signature, and certification of the certified risk assessor conducting the assessment;

(vii) Name, address, and telephone number of the certified firm employing each certified risk assessor if applicable;

(viii) Name, address, and telephone number of each recognized laboratory conducting analysis of collected samples;

(ix) Results of the visual inspection;

(x) Testing method and sampling procedure for paint analysis employed;

(xi) Specific locations of each painted component tested for the presence of lead;

(xii) All data collected from on-site testing, including quality control data and, if used, the serial number of any XRF device.

(xiii) All results of laboratory analysis on collected paint, soil, and dust samples;

(xiv) Any other sampling results;

(xv) Any background information collected pursuant to paragraph (4)(c) of this section;

(xvi) To the extent that they are used as part of the lead-based paint hazard determination, the results of any previous inspections or analyses for the presence of lead-based paint, or other assessments of lead-based paint-related hazards;

(xvii) A description of the location, type, and severity of identified lead-based paint hazards and any other potential lead hazards; and

(xviii) A description of interim controls and/or abatement options for each identified lead-based paint hazard and a suggested prioritization for addressing each hazard. If the use of an encapsulant or enclosure is recommended, the report shall recommend a maintenance and monitoring schedule for the encapsulant or enclosure.

(5) Abatement.

(a) An abatement shall be conducted only by an individual certified by the ~~[E]~~executive ~~[S]~~secretary, and if conducted, shall be conducted according to the procedures in this paragraph.

(b) A certified supervisor is required for each abatement project and shall be onsite during all work site preparation and during the post-abatement cleanup of work areas. At all other times when abatement activities are being conducted, the certified supervisor shall be onsite or available by telephone, pager or answering service, and able to be present at the work site in no more than 2 hours.

(c) The certified supervisor and the certified firm employing that supervisor shall ensure that all abatement activities are conducted according to the requirements of this section and all other ~~[F]~~federal, ~~[S]~~state, and local requirements.

(d) A certified firm must notify the [E]xecutive [S]ecretary of lead-based paint abatement activities as follows:

(i) Except as provided in paragraph (5)(d)(ii) of this section, the [E]xecutive [S]ecretary must be notified prior to conducting lead-based paint abatement activities. The original notification must be received by the [E]xecutive [S]ecretary at least 5 business days before the start date of any lead-based paint abatement activities;

(ii) Notification for lead-based paint abatement activities required in response to an elevated blood lead level (EBL) determination, or [F]ederal, [S]tate, [T]ribal, or local emergency abatement order should be received by the [E]xecutive [S]ecretary as early as possible before, but must be received no later than the start date of the lead-based paint abatement activities. Should the start date and/or location provided to the [E]xecutive [S]ecretary change, an updated notification must be received by the [E]xecutive [S]ecretary on or before the start date provided to the [E]xecutive [S]ecretary. Documentation showing evidence of an EBL determination or a copy of the [F]ederal/[S]tate/[T]ribal/local emergency abatement order must be included in the written notification to take advantage of this abbreviated notification period;

(iii) Except as provided in paragraph (5)(d)(ii) of this section, updated notification must be provided to the [E]xecutive [S]ecretary for lead-based paint abatement activities that will begin on a date other than the start date specified in the original notification, as follows:

(A) For lead-based paint abatement activities beginning prior to the start date provided to the [E]xecutive [S]ecretary an updated notification must be received by the [E]xecutive [S]ecretary at least 5 business days before the new start date included in the notification; and

(B) For lead-based paint abatement activities beginning after the start date provided to the [E]xecutive [S]ecretary an updated notification must be received by the [E]xecutive [S]ecretary on or before the start date provided to the [E]xecutive [S]ecretary;

(iv) Except as provided in paragraph (5)(d)(ii) of this section, updated notification must be provided to the [E]xecutive [S]ecretary for any change in location of lead-based paint abatement activities at least 5 business days prior to the start date provided to the [E]xecutive [S]ecretary;

(v) Updated notification must be provided to the [E]xecutive [S]ecretary when lead-based paint abatement activities are canceled, or when there are other significant changes including, but not limited to, when the square footage or acreage to be abated changes by more than 20%. This updated notification must be received by the Executive Secretary on or before the start date provided to the [E]xecutive [S]ecretary, or if work has already begun, within 24 hours of the change;

(vi) The following must be included in each notification:

(A) Notification type (original, updated, or cancellation);

(B) Date when lead-based paint abatement activities will

start;

(C) Date when lead-based paint abatement activities will end (approximation using best professional judgment);

(D) Firm's name, Utah lead-based paint firm certification number, address, and telephone number;

(E) Type of building (e.g., single family dwelling, multi-family dwelling, and/or child-occupied facilities) on/in which abatement work will be performed;

(F) Property name (if applicable);

(G) Property address including apartment or unit number(s) (if applicable) for abatement work;

(H) Documentation showing evidence of an EBL determination or a copy of the [F]ederal/[S]tate/[T]ribal/local emergency abatement order, if using the abbreviated time period as described in paragraph (5)(d)(ii) of this section;

(I) Name and Utah lead-based paint individual certification number of the project supervisor;

(J) Approximate square footage/acreage to be abated;

(K) Brief description of abatement activities to be performed; and

(L) Name, title, and signature of the representative of the certified firm who prepared the notification;

(vii) Notification must be accomplished using any of the following methods: Written notification, or electronically using the Utah Division of Air Quality electronic notification system. Written notification can be accomplished using either the sample form titled "Lead-Based Paint Abatement Project Notification" or similar form containing the information required in paragraph (5)(d)(vi) of this section. All written notifications must be delivered by United States Postal Service, fax, commercial delivery service, or hand delivery on or before the applicable date. Instructions and sample forms can be obtained from the Utah Division of Air Quality Lead-Based Paint Program web site;

(viii) Lead-based paint abatement activities shall not begin on a date, or at a location other than that specified in either an original or updated notification, in the event of changes to the original notification; and

(ix) No firm or individual shall engage in lead-based paint abatement activities, as defined in R307-840-2, prior to notifying the [E]xecutive [S]ecretary of such activities according to the requirements of this paragraph.

(e) A written occupant protection plan shall be developed for all abatement projects and shall be prepared according to the following procedures:

(i) The occupant protection plan shall be unique to each residential dwelling or child-occupied facility and be developed prior to the abatement. The occupant protection plan shall describe the measures and management procedures that will be taken during the abatement to protect the building occupants from exposure to any lead-based paint hazards; and

(ii) A certified supervisor or project designer shall prepare the occupant protection plan.

(f) The work practices listed below shall be restricted during an abatement as follows:

(i) Open-flame burning or torching of lead-based paint is prohibited;

(ii) Machine sanding or grinding or abrasive blasting or sandblasting of lead-based paint is prohibited unless used with High Efficiency Particulate Air (HEPA) exhaust control which removes particles of 0.3 microns or larger from the air at 99.97% or greater efficiency;

(iii) Dry scraping of lead-based paint is permitted only in conjunction with heat guns or around electrical outlets or when

treating defective paint spots totaling no more than 2 square feet in any one room, hallway, or stairwell or totaling no more than 20 square feet on exterior surfaces; and

(iv) Operating a heat gun on lead-based paint is permitted only at temperatures below 1100 degrees Fahrenheit.

(g) If conducted, soil abatement shall be conducted in one of the following ways:

(i) If the soil is removed:

(A) The soil shall be replaced by soil with a lead concentration as close to local background as practicable, but no greater than 400 ppm; and

(B) The soil that is removed shall not be used as top soil at another residential property or child-occupied facility; or

(ii) If soil is not removed, the soil shall be permanently covered, as defined in R307-840-2.

(h) The following post-abatement clearance procedures shall be performed only by a certified inspector or risk assessor:

(i) Following an abatement, a visual inspection shall be performed to determine if deteriorated painted surfaces and/or visible amounts of dust, debris, or residue are still present. If deteriorated painted surfaces or visible amounts of dust, debris, or residue are present, these conditions must be eliminated prior to the continuation of the clearance procedures;

(ii) Following the visual inspection and any post-abatement cleanup required by paragraph (5)(h)(i) of this section, clearance sampling for lead in dust shall be conducted. Clearance sampling may be conducted by employing single-surface sampling or composite sampling techniques;

(iii) Dust samples for clearance purposes shall be taken using documented methodologies that incorporate adequate quality control procedures;

(iv) Dust samples for clearance purposes shall be taken a minimum of 1 hour after completion of final post-abatement cleanup activities;

(v) The following post-abatement clearance activities shall be conducted as appropriate based upon the extent or manner of abatement activities conducted in or to the residential dwelling or child-occupied facility:

(A) After conducting an abatement with containment between abated and unabated areas, one dust sample shall be taken from one interior window sill and from one window trough (if present) and one dust sample shall be taken from the floors of each of no less than four rooms, hallways, or stairwells within the containment area. In addition, one dust sample shall be taken from the floor outside the containment area. If there are less than four rooms, hallways, or stairwells within the containment area, then all rooms, hallways, or stairwells shall be sampled;

(B) After conducting an abatement with no containment, two dust samples shall be taken from each of no less than four rooms, hallways, or stairwells in the residential dwelling or child-occupied facility. One dust sample shall be taken from one interior window sill and window trough (if present) and one dust sample shall be taken from the floor of each room, hallway, or stairwell selected. If there are less than four rooms, hallways, or stairwells within the residential dwelling or child-occupied facility, then all rooms, hallways, or stairwells shall be sampled; and

(C) Following an exterior paint abatement, a visible inspection shall be conducted. All horizontal surfaces in the outdoor living area closest to the abated surface shall be found to be

cleaned of visible dust and debris. In addition, a visual inspection shall be conducted to determine the presence of paint chips on the dripline or next to the foundation below any exterior surface abated. If paint chips are present, they must be removed from the site and properly disposed of, according to all applicable [F]ederal, [S]tate, and local requirements;

(vi) The rooms, hallways, or stairwells selected for sampling shall be selected according to documented methodologies;

(vii) The certified inspector or risk assessor shall compare the residual lead level (as determined by the laboratory analysis) from each single surface dust sample with clearance levels in paragraph (5)(h)(viii) of this section for lead in dust on floors, interior window sills, and window troughs or from each composite dust sample with the applicable clearance levels for lead in dust on floors, interior window sills, and window troughs divided by half the number of subsamples in the composite sample. If the residual lead level in a single surface dust sample equals or exceeds the applicable clearance level or if the residual lead level in a composite dust sample equals or exceeds the applicable clearance level divided by half the number of subsamples in the composite sample, the components represented by the failed sample shall be recleaned and retested; and

(viii) The clearance levels for lead in dust are 40 ug/ft<sup>2</sup>[2] for floors, 250 ug/ft<sup>2</sup>[2] for interior window sills, and 400 ug/ft<sup>2</sup>[2] for window troughs.

(i) In a multi-family dwelling with similarly constructed and maintained residential dwellings, random sampling for the purposes of clearance may be conducted provided:

(i) The certified individuals who abate or clean the residential dwellings do not know which residential dwelling will be selected for the random sample;

(ii) A sufficient number of residential dwellings are selected for dust sampling to provide a 95%[~~percent~~] level of confidence that no more than 5%[~~percent~~] or 50 of the residential dwellings (whichever is smaller) in the randomly sampled population exceed the appropriate clearance levels; and

(iii) The randomly selected residential dwellings shall be sampled and evaluated for clearance according to the procedures found in paragraph (5)(h) of this section.

(j) An abatement report shall be prepared by a certified supervisor or project designer no later than 30 business days after receiving the results of final clearance testing and all soil analyses (if applicable). The abatement report shall include the following information:

(i) Start and completion dates of abatement;

(ii) The name and address of each certified firm conducting the abatement and the name of each supervisor assigned to the abatement project;

(iii) The occupant protection plan prepared pursuant to paragraph (5)(e) of this section;

(iv) The name, address, and signature of each certified risk assessor or inspector conducting clearance sampling and the date of clearance testing;

(v) The results of clearance testing and all soil analyses (if applicable) and the name of each recognized laboratory that conducted the analyses; and

(vi) A detailed written description of the abatement, including abatement methods used, locations of rooms and/or components where abatement occurred, reason for selecting

particular abatement methods for each component, and any suggested monitoring of encapsulants or enclosures.

(6) Collection and laboratory analysis of samples. Any paint chip, dust, or soil samples collected pursuant to the work practice standards contained in this section shall be:

(a) Collected by persons certified by the [E]executive [S]secretary as an inspector or risk assessor; and

(b) Analyzed by a laboratory recognized by EPA pursuant to Section 405(b) of TSCA as being capable of performing analyses for lead compounds in paint chip, dust, and soil samples.

(7) Composite dust sampling. Composite dust sampling may only be conducted in the situations specified in paragraphs (3) through (5) of this section. If such sampling is conducted, the following conditions shall apply:

(a) Composite dust samples shall consist of at least two subsamples;

(b) Every component that is being tested shall be included in the sampling; and

(c) Composite dust samples shall not consist of subsamples from more than one type of component.

(8) Determinations.

(a) Lead-based paint is present:

(i) On any surface that is tested and found to contain lead equal to or in excess of 1.0 milligrams per square centimeter or equal to or in excess of 0.5% by weight; and

(ii) On any surface like a surface tested in the same room equivalent that has a similar painting history and that is found to be lead-based paint.

(b) A paint-lead hazard is present:

(i) On any friction surface that is subject to abrasion and where the lead dust levels on the nearest horizontal surface underneath the friction surface (e.g., the window sill or floor) are equal to or greater than the dust hazard levels identified in the definition of "Dust-lead hazard" in R307-840-2;

(ii) On any chewable lead-based paint surface on which there is evidence of teeth marks;

(iii) Where there is any damaged or otherwise deteriorated lead-based paint on an impact surface that is caused by impact from a related building component (such as a door knob that knocks into a wall or a door that knocks against its door frame); and

(iv) If there is any other deteriorated lead-based paint in any residential building or child-occupied facility or on the exterior of any residential building or child-occupied facility.

(c) A dust-lead hazard is present in a residential dwelling or child-occupied facility:

(i) In a residential dwelling on floors and interior window sills when the weighted arithmetic mean lead loading for all single surface or composite samples of floors and interior window sills are equal to or greater than 40 ug/ft<sup>2</sup>[2] for floors and 250 ug/ft<sup>2</sup>[2] for interior window sills, respectively;

(ii) On floors or interior window sills in an unsampled residential dwelling in a multi-family dwelling, if a dust-lead hazard is present on floors or interior window sills, respectively, in at least one sampled residential unit on the property; and

(iii) On floors or interior window sills in an unsampled common area in a multi-family dwelling, if a dust-lead hazard is present on floors or interior window sills, respectively, in at least one sampled common area in the same common area group on the property.

(d) A soil-lead hazard is present:

(i) In a play area when the soil-lead concentration from a composite play area sample of bare soil is equal to or greater than 400 parts per million; or

(ii) In the rest of the yard when the arithmetic mean lead concentration from a composite sample (or arithmetic mean of composite samples) of bare soil from the rest of the yard (i.e., non-play areas) for each residential building on a property is equal to or greater than 1,200 parts per million.

(9) Recordkeeping. All reports or plans required in this section shall be maintained by the certified firm or individual who prepared the report for no fewer than 3 years. The certified firm or individual also shall provide copies of these reports to the building owner who contracted for its services.

#### **R307-842-4. Lead-Based Paint Activities Requirements.**

Lead-based paint activities, as defined in R307-840-2, shall only be conducted according to the procedures and work practice standards contained in R307-842-3 of this rule. No individual or firm may offer to perform or perform any lead-based paint activity as defined in R307-840-2, unless certified to perform that activity according to the procedures in R307-842-2.

#### **R307-842-5. Work Practice Requirements for Lead-Based Paint Hazards.**

Applicable certification, occupant protection, and clearance requirements and work practice standards are found in R307-842 and in regulations issued by HUD at 24 CFR Part 35, Subpart R. The work practice standards in those regulations do not apply when treating paint-lead hazards of less than:

(a) Two square feet of deteriorated lead-based paint per room or equivalent,

(b) Twenty square feet of deteriorated paint on the exterior building, or

(c) Ten percent of the total surface area of deteriorated paint on an interior or exterior type of component with a small surface area.

**KEY: paint, lead-based paint, lead-based paint abatement**

**Date of Enactment or Last Substantive Amendment: [~~April 8, 2010~~2012]**

**Authorizing, and Implemented or Interpreted Law: 19-2-104(1)(i)**

## Environmental Quality, Solid and Hazardous Waste

### R315-16

## Standards for Universal Waste Management

### NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 35867

FILED: 02/10/2012

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** This amendment adopts equivalent federal regulations to maintain equivalency with the U.S. Environmental Protection Agency (EPA) and retain authorization.

**SUMMARY OF THE RULE OR CHANGE:** Section 3006 of the federal Resource Conservation and Recovery Act (RCRA) provides for delegation of the hazardous waste program to states to administer in lieu of the U.S. Environmental Protection Agency (EPA). In order to receive authorization from EPA for the hazardous waste program, states must have and demonstrate equivalent legal authorities and regulations to those of the federal government for the management of hazardous waste. Changes to the federal hazardous waste laws and regulations require states to update and amend their laws and rules in order to maintain program equivalency for state primacy.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 19-6-105 and Section 19-6-106

**ANTICIPATED COST OR SAVINGS TO:**

◆ **THE STATE BUDGET:** The compliance costs for the state budget will not change since the rule change implements current statutory and regulatory requirements.

◆ **LOCAL GOVERNMENTS:** The compliance costs for local governments will not change since the rule change implements current statutory and regulatory requirements.

◆ **SMALL BUSINESSES:** The compliance costs for small businesses will not change since the rule change implements current statutory and regulatory requirements.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** The compliance costs for other persons will not change since the rule change implements current statutory and regulatory requirements.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** The compliance costs for affected persons will not change since the rule change implements current statutory and regulatory requirements.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** The proposed changes in this rule will have no fiscal impact on businesses beyond the current statutory and regulatory impact.

**THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:**

ENVIRONMENTAL QUALITY  
SOLID AND HAZARDOUS WASTE  
SECOND FLOOR  
195 N 1950 W  
SALT LAKE CITY, UT 84116-3097  
or at the Division of Administrative Rules.

**DIRECT QUESTIONS REGARDING THIS RULE TO:**

◆ Allan Moore by phone at 801-536-0211, by FAX at 801-536-0222, or by Internet E-mail at allanmoore@utah.gov  
◆ Tina Mercer by phone at 801-536-0259, by FAX at 801-536-0222, or by Internet E-mail at tmmrcer@utah.gov

**INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 04/02/2012**

**THIS RULE MAY BECOME EFFECTIVE ON: 04/13/2012**

**AUTHORIZED BY: Scott Anderson, Director**

**R315. Environmental Quality, Solid and Hazardous Waste.****R315-16. Standards for Universal Waste Management.****R315-16-1. General.****1.1 SCOPE**

(a) This rule establishes requirements for managing the following:

- (1) Batteries as described in section 1.2;
- (2) Pesticides as described in section 1.3;
- (3) ~~Thermostats~~ Mercury-containing equipment as described in section 1.4; and

- (4) Mercury-containing lamps as described in section 1.5.

(b) This rule provides an alternative set of management standards in lieu of regulation under R315-1 through R315-101.

**1.2 APPLICABILITY - BATTERIES**

- (a) Batteries covered under R315-16.

(1) The requirements of this rule apply to persons managing batteries, as described in section 1.9, except those listed in paragraph (b) of this section.

(2) Spent lead-acid batteries which are not managed under 40 CFR part 266, subpart G, as incorporated by reference at R315-14-6, are subject to management under this rule.

(b) Batteries not covered under R315-16. The requirements of this rule do not apply to persons managing the following batteries:

(1) Spent lead-acid batteries that are managed under R315-14-6.

(2) Batteries, as described in section 1.9, that are not yet wastes under R315-2, including those that do not meet the criteria for waste generation in paragraph (c) of this section.

(3) Batteries, as described in section 1.9, that are not hazardous waste. A battery is a hazardous waste if it exhibits one or more of the characteristics identified in R315-2-9.

- (c) Generation of waste batteries.

(1) A used battery becomes a waste on the date it is discarded, e.g., when sent for reclamation.

(2) An unused battery becomes a waste on the date the handler decides to discard it.

**1.3 APPLICABILITY - PESTICIDES**

(a) Pesticides covered under R315-16. The requirements of this rule apply to persons managing pesticides, as described in section 1.9, meeting the following conditions, except those listed in paragraph (b) of this section:

- (1) Recalled pesticides that are:

(i) Stocks of a suspended and canceled pesticide that are part of a voluntary or mandatory recall under FIFRA Section 19(b),

including, but not limited to those owned by the registrant responsible for conducting the recall; or

(ii) Stocks of a suspended or canceled pesticide, or a pesticide that is not in compliance with FIFRA, that are part of a voluntary recall by the registrant.

(2) Stocks of other unused pesticide products that are collected and managed as part of a waste pesticide collection program.

(b) Pesticides not covered under R315-16. The requirements of this rule do not apply to persons managing the following pesticides:

(1) Recalled pesticides described in paragraph (a)(1) of this section, and unused pesticide products described in paragraph (a)(2) of this section, that are managed by farmers in compliance with R315-5-7. R315-5-7 addresses pesticides disposed of on the farmer's own farm in a manner consistent with the disposal instructions on the pesticide label, providing the container is triple rinsed in accordance with R315-2-7(b)(3);

(2) Pesticides not meeting the conditions set forth in paragraph (a) of this section. These pesticides must be managed in compliance with the hazardous waste regulations in R315-1 through R315-101;

(3) Pesticides that are not wastes under R315-2, including those that do not meet the criteria for waste generation in paragraph (c) of this section or those that are not wastes as described in paragraph (d) of this section; and

(4) Pesticides that are not hazardous waste. A pesticide is a hazardous waste if it is listed in R315-2-10 or if it exhibits one or more of the characteristics identified in R315-2-9.

(c) When a pesticide becomes a waste.

(1) A recalled pesticide described in paragraph (a)(1) of this section becomes a waste on the first date on which both of the following conditions apply:

(i) The generator of the recalled pesticide agrees to participate in the recall; and

(ii) The person conducting the recall decides to discard, e.g., burn the pesticide for energy recovery.

(2) An unused pesticide product described in paragraph (a) (2) of this section becomes a waste on the date the generator decides to discard it.

(d) Pesticides that are not wastes. The following pesticides are not wastes:

(1) Recalled pesticides described in paragraph (a)(1) of this section, provided that the person conducting the recall:

(i) Has not made a decision to discard, e.g., burn for energy recovery, the pesticide. Until such a decision is made, the pesticide does not meet the definition of "solid waste" under R315-2-2; thus the pesticide is not a hazardous waste and is not subject to hazardous waste requirements, including R315-16. This pesticide remains subject to the requirements of FIFRA; or

(ii) Has made a decision to use a management option that, under R315-2-2, does not cause the pesticide to be a solid waste, i.e., the selected option is use, other than use constituting disposal, or reuse, other than burning for energy recovery or reclamation. Such a pesticide is not a solid waste and therefore is not a hazardous waste, and is not subject to the hazardous waste requirements including R315-16. This pesticide, including a recalled pesticide that is exported to a foreign destination for use or reuse, remains subject to the requirements of FIFRA.

(2) Unused pesticide products described in paragraph (a)(2) of this section, if the generator of the unused pesticide product has not

decided to discard, them, e.g., burn for energy recovery. These pesticides remain subject to the requirements of FIFRA.

#### 1.4 APPLICABILITY -- ~~[MERCURY THERMOSTATS]~~ MERCURY-CONTAINING EQUIPMENT

(a) ~~[Thermostats]~~Mercury-containing equipment covered under R315-16. The requirements of this section apply to persons managing ~~[thermostats]~~mercury-containing equipment, as described in section 1.9, except those listed in paragraph (b) of this section.

(b) ~~[Thermostats]~~Mercury-containing equipment not covered under R315-16. The requirements of this section do not apply to persons managing the following ~~[thermostats]~~mercury-containing equipment:

(1) ~~[Thermostats]~~Mercury-containing equipment that are not yet wastes under R315-2. Paragraph (c) of this section describes when ~~[thermostats]~~mercury-containing equipment become wastes.

(2) ~~[Thermostats]~~Mercury-containing equipment that are not hazardous waste. ~~[A thermostat]~~A Mercury-containing equipment is a hazardous waste if it exhibits one or more of the characteristics identified in R315-2-9.

(c) Generation of waste ~~[thermostats]~~mercury-containing equipment.

(1) ~~[A thermostat]~~Used ~~[thermostat]~~mercury-containing equipment becomes a waste on the date it is discarded, e.g., sent for reclamation.

(2) ~~[An unused]~~Used ~~[thermostat]~~mercury-containing equipment becomes a waste on the date the handler decides to discard it.

#### 1.5 APPLICABILITY - LAMPS

(a) Lamps covered under R315-16. The requirements of this section apply to persons managing lamps, as described in section 1.9, except those listed in paragraph (b) of this section.

(b) Lamps not covered under R315-16. The requirements of R315-16 do not apply to persons managing the following lamps:

(1) Lamps that are not yet wastes under R315-2 as provided in paragraph (c) of this section.

(2) Lamps, that are not hazardous waste. A lamp is a hazardous waste if it exhibits one or more of the characteristics identified in R315-2-9(a) and (d) - (g).

(c) Generation of waste lamps.

(1) A used lamp becomes a waste on the date it is discarded, e.g., sent for reclamation.

(2) An unused lamp becomes a waste on the date the handler decides to discard it.

#### 1.8 APPLICABILITY - HOUSEHOLD AND CONDITIONALLY EXEMPT SMALL QUANTITY GENERATOR WASTE

(a) Persons managing the wastes listed below may, at their option, manage them under the requirements of this section:

(1) Household wastes that are exempt under R315-2-4 and are also of the same type as the universal wastes defined in section 1.9; or

(2) Conditionally exempt small quantity generator wastes that are exempt under R315-2-5 and are also of the same type as the universal wastes defined in section 1.9.

(b) Persons who commingle the wastes described in paragraphs (a)(1) and (a)(2) of this section together with universal waste regulated under this rule must manage the commingled waste under the requirements of this rule.

## 1.9 DEFINITIONS

(a) "Battery" means a device consisting of one or more electrically connected electrochemical cells which is designed to receive, store, and deliver electric energy. An electrochemical cell is a system consisting of an anode, cathode, and an electrolyte, plus such connections, electrical and mechanical, as may be needed to allow the cell to deliver or receive electrical energy. The term battery also includes an intact, unbroken battery from which the electrolyte has been removed.

(b) "Destination facility" means a facility that treats, disposes of, or recycles a particular category of universal waste, except those management activities described in sections 16-2.4(a) and (c) and sections 16-3.4(a) and (c). A facility at which a particular category of universal waste is only accumulated, is not a destination facility for purposes of managing that category of universal waste.

(c) "FIFRA" means the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. 136-136y.

(d) "Generator" means any person, by site, whose act or process produces hazardous waste identified or listed in R315-2 of this rule, or whose act first causes a hazardous waste to become subject to regulation.

(e) "Lamp," also referred to as "universal waste lamp" is defined as the bulb or tube portion of an electric lighting device. A lamp is specifically designed to produce radiant energy, most often in the ultraviolet, visible, and infra-red regions of the electromagnetic spectrum. Examples of common universal waste electric lamps include fluorescent, high intensity discharge, neon, mercury vapor, high pressure sodium, and metal halide lamps.

(f) "Large Quantity Handler of Universal Waste" means a universal waste handler, as defined in this section, who accumulates 5,000 kilograms or more total of universal waste, batteries, pesticides, lamps, or ~~thermostats~~mercury-containing equipment, calculated collectively, at any time. This designation as a large quantity handler of universal waste is retained through the end of the calendar year in which 5,000 kilograms or more total of universal waste is accumulated.

(g) "Mercury-containing equipment" means a device or part of a device, including thermostats, but excluding batteries and lamps, that contains elemental mercury integral to its function.

~~(g)h~~ "On-site" means the same or geographically contiguous property which may be divided by public or private right-of-way, provided that the entrance and exit between the properties is at a cross-roads intersection, and access is by crossing as opposed to going along the right of way. Non-contiguous properties owned by the same person but connected by a right-of-way which he controls and to which the public does not have access, are also considered on-site property.

~~(h)i~~ "Pesticide" means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest, or intended for use as a plant regulator, defoliant, or desiccant, other than any article that:

- (1) Is a new animal drug under FFDCA section 201(w), or
- (2) Is an animal drug that has been determined by regulation of the Secretary of Health and Human Services not to be a new animal drug, or
- (3) Is an animal feed under FFDCA section 201(x) that bears or contains any substances described by paragraph (1) or (2) of this section.

~~(i)j~~ "Small Quantity Handler of Universal Waste" means a universal waste handler, as defined in this section, who does not accumulate 5,000 kilograms or more total of universal waste, batteries, pesticides, lamps, or ~~thermostats~~mercury-containing equipment, calculated collectively, at any time.

~~(j)k~~ "Thermostat" means a temperature control device that contains metallic mercury in an ampule attached to a bimetal sensing element, and mercury-containing ampules that have been removed from these temperature control devices in compliance with the requirements of sections 16-2.4(c)(2) or 16-3.4(c)(2).

~~(k)l~~ "Universal Waste" means any of the following hazardous wastes that are subject to the universal waste requirements of R315-16:

- (1) Batteries as described in section 16-1.2;
- (2) Pesticides as described in section 16-1.3;
- (3) ~~Thermostats~~Mercury-containing equipment as described in section 16-1.4; and
- (4) Lamps as described in section 16-1.5.

~~(l)m~~ "Universal Waste Handler":

- (1) Means:
- (i) A generator, as defined in this section, of universal waste;

or

(ii) The owner or operator of a facility, including all contiguous property, that receives universal waste from other universal waste handlers, accumulates universal waste, and sends universal waste to another universal waste handler, to a destination facility, or to a foreign destination.

(2) Does not mean:

- (i) A person who treats, except under the provisions of sections 16-2.4(a) or (c), or 16-3.4(a) or (c), disposes of, or recycles universal waste; or
- (ii) A person engaged in the off-site transportation of universal waste by air, rail, highway, or water, including a universal waste transfer facility.

~~(m)n~~ "Universal Waste Transfer Facility" means any transportation-related facility including loading docks, parking areas, storage areas and other similar areas where shipments of universal waste are held during the normal course of transportation for ten days or less.

~~(n)o~~ "Universal Waste Transporter" means a person engaged in the off-site transportation of universal waste by air, rail, highway, or water.

## **R315-16-2. Standards for Small Quantity Handlers of Universal Waste.**

### 2.1 APPLICABILITY

This section applies to small quantity handlers of universal waste as defined in section 16-1.9.

### 2.2 PROHIBITIONS

A small quantity handler of universal waste is:

- (a) Prohibited from disposing of universal waste; and
- (b) Prohibited from diluting or treating universal waste, except by responding to releases as provided in section 16-2.8; or by managing specific wastes as provided in section 16-2.4.

### 2.3 NOTIFICATION

A small quantity handler of universal waste is not required to notify the Division of universal waste handling activities.

## 2.4 WASTE MANAGEMENT

(a) Universal waste batteries. A small quantity handler of universal waste must manage universal waste batteries in a way that prevents releases of any universal waste or component of a universal waste to the environment, as follows:

(1) A small quantity handler of universal waste must contain any universal waste battery that shows evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions in a container. The container must be closed, structurally sound, compatible with the contents of the battery, and must lack evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions.

(2) A small quantity handler of universal waste may conduct the following activities as long as the casing of each individual battery cell is not breached and remains intact and closed, except that cells may be opened to remove electrolyte but must be immediately closed after removal:

- (i) Sorting batteries by type;
- (ii) Mixing battery types in one container;
- (iii) Discharging batteries so as to remove the electric charge;
- (iv) Regenerating used batteries;
- (v) Disassembling batteries or battery packs into individual batteries or cells;
- (vi) Removing batteries from consumer products; or
- (vii) Removing electrolyte from batteries.

(3) A small quantity handler of universal waste who removes electrolyte from batteries, or who generates other solid waste, e.g., battery pack materials, discarded consumer products, as a result of the activities listed above, must determine whether the electrolyte or other solid waste exhibit a characteristic of hazardous waste identified in R315-2-9.

(i) If the electrolyte or other solid waste exhibits a characteristic of hazardous waste, it is subject to all applicable requirements of R315-1 through R315-101. The handler is considered the generator of the hazardous electrolyte or other waste and is subject to R315-5.

(ii) If the electrolyte or other solid waste is not hazardous, the handler may manage the waste in any way that is in compliance with applicable federal, state or local solid waste regulations.

(b) Universal waste pesticides. A small quantity handler of universal waste must manage universal waste pesticides in a way that prevents releases of any universal waste or component of a universal waste to the environment. The universal waste pesticides must be contained in one or more of the following:

(1) A container that remains closed, structurally sound, compatible with the pesticide, and that lacks evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions; or

(2) A container that does not meet the requirements of paragraph (b)(1) of this section, provided that the unacceptable container is overpacked in a container that does meet the requirements of paragraph (b)(1) of this section; or

(3) Except for 40 CFR 265.197(c), 265.200, and 265.201, a tank that meets the requirements of R315-7-17, which incorporates 40 CFR part 265, subpart J by reference; or

(4) A transport vehicle or vessel that is closed, structurally sound, compatible with the pesticide, and that lacks evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions.

(c) ~~[Universal waste]~~ ~~[thermostats]~~ Mercury-containing equipment. A small quantity handler of universal waste must manage universal waste ~~[thermostats]~~ mercury-containing equipment in a way that prevents releases of any universal waste or component of a universal waste to the environment, as follows:

~~[(1) A small quantity handler of universal waste must contain any universal waste thermostat that shows evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions in a container. The container must be closed, structurally sound, compatible with the contents of the thermostat, and must lack evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions.]~~ (1) A small quantity handler of universal waste must place in a container any universal waste mercury-containing equipment with non-contained elemental mercury or that shows evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions. The container must be closed, structurally sound, compatible with the contents of the device, must lack evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions, and must be reasonably designed to prevent the escape of mercury into the environment by volatilization or any other means.

(2) A small quantity handler of universal waste may remove mercury-containing ampules from universal waste ~~[thermostats]~~ mercury-containing equipment provided the handler:

(i) Removes the ampules in a manner designed to prevent breakage of the ampules;

(ii) Removes ampules only over or in a containment device, e.g., tray or pan sufficient to collect and contain any mercury released from an ampule in case of breakage;

(iii) Ensures that a mercury clean-up system is readily available to immediately transfer any mercury resulting from spills or leaks from broken ampules, from the containment device to a container that meets the requirements of 40 CFR 262.34, as incorporated by reference at R315-5-3.34;

(iv) Immediately transfers any mercury resulting from spills or leaks from broken ampules from the containment device to a container that meets the requirements of 40 CFR 262.34, as incorporated by reference at R315-5-3.34;

(v) Ensures that the area in which ampules are removed is well ventilated and monitored to ensure compliance with applicable OSHA exposure levels for mercury;

(vi) Ensures that employees removing ampules are thoroughly familiar with proper waste mercury handling and emergency procedures, including transfer of mercury from containment devices to appropriate containers;

(vii) Stores removed ampules in closed, non-leaking containers that are in good condition;

(viii) Packs removed ampules in the container with packing materials adequate to prevent breakage during storage, handling, and transportation; and

~~[(3)(i) A small quantity handler of universal waste who removes mercury-containing ampules from thermostats must determine whether the following exhibit a characteristic of hazardous waste identified in R315-2-9:~~

~~\_\_\_\_\_ (A) Mercury or clean-up residues resulting from spills or leaks; or~~

~~\_\_\_\_\_ (B) Other solid waste generated as a result of the removal of mercury-containing ampules, e.g., remaining thermostat units.~~

~~\_\_\_\_\_ (ii) If the mercury, residues, or other solid waste exhibit a characteristic of hazardous waste, it must be managed in compliance with all applicable requirements of R315-1 through R315-101. The handler is considered the generator of the mercury, residues, or other waste and must manage it subject to R315-5.~~

~~\_\_\_\_\_ (iii) If the mercury, residues, or other solid waste is not hazardous, the handler may manage the waste in any way that is in compliance with applicable federal, state or local solid waste regulations.](3) A small quantity handler of universal waste~~

~~mercury-containing equipment that does not contain an ampule may remove the open original housing holding the mercury from universal waste mercury-containing equipment provided the handler:~~

~~\_\_\_\_\_ (i) Immediately seals the original housing holding the mercury with an air-tight seal to prevent the release of any mercury to the environment; and~~

~~\_\_\_\_\_ (ii) Follows all requirements for removing ampules and managing removed ampules under paragraph (c)(2) of this section; and~~

~~\_\_\_\_\_ (4)(i) A small quantity handler of universal waste who removes mercury-containing ampules from mercury-containing equipment or seals mercury from mercury-containing equipment in its original housing must determine whether the following exhibit a characteristic of hazardous waste identified in 40 CFR part 261, subpart C:~~

~~\_\_\_\_\_ (A) Mercury or clean-up residues resulting from spills or leaks and/or~~

~~\_\_\_\_\_ (B) Other solid waste generated as a result of the removal of mercury-containing ampules or housings ( e.g. , the remaining mercury-containing device).~~

~~\_\_\_\_\_ (ii) If the mercury, residues, and/or other solid waste exhibits a characteristic of hazardous waste, it must be managed in compliance with all applicable requirements of 40 CFR parts 260 through 272. The handler is considered the generator of the mercury, residues, and/or other waste and must manage it in compliance with 40 CFR part 262.~~

~~\_\_\_\_\_ (iii) If the mercury, residues, and/or other solid waste is not hazardous, the handler may manage the waste in any way that is in compliance with applicable federal, state or local solid waste regulations.~~

~~\_\_\_\_\_ (d) Lamps. A small quantity handler of universal waste must manage lamps in a way that prevents releases of any universal waste or component of a universal waste to the environment, as follows:~~

~~\_\_\_\_\_ (1) A small quantity handler of universal waste must contain any lamp in containers or packages that are structurally sound, adequate to prevent breakage, and compatible with the contents of the lamps. Such containers and packages must remain closed and must lack evidence of leakage, spillage or damage that could cause leakage under reasonably foreseeable conditions.~~

~~\_\_\_\_\_ (2) A small quantity handler of universal waste must immediately clean up and place in a container any lamp that is broken and must place in a container any lamp that shows evidence of breakage, leakage, or damage that could cause the release of mercury or other hazardous constituents to the environment.~~

Containers must be closed, structurally sound, compatible with the contents of the lamps and must lack evidence of leakage, spillage or damage that could cause leakage or releases of mercury or other hazardous constituents to the environment under reasonably foreseeable conditions.

~~\_\_\_\_\_ (d) Lamps. A small quantity handler of universal waste must manage lamps in a way that prevents release of any universal waste or component of a universal waste to the environment as follows:~~

~~\_\_\_\_\_ (1) A small quantity handler of universal waste shall contain any lamp in containers or packages that are structurally sound, adequate to prevent breakage, and compatible with the contents of the lamps. Such containers and packages must remain closed and must lack evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions.~~

~~\_\_\_\_\_ (2) A small quantity handler of universal waste shall immediately clean up and place in a container any lamp that is broken and must place in a container any lamp that shows evidence of breakage, leakage, or damage that could cause the release of mercury or other hazardous constituents to the environment. Containers must be closed, structurally sound, compatible with the contents of the lamps and must lack evidence of leakage, spillage, or damage that could cause leakage or releases of mercury or other hazardous constituents to the environment under reasonably foreseeable conditions.~~

#### ] 2.5 LABELING/MARKING

A small quantity handler of universal waste must label or mark the universal waste to identify the type of universal waste as specified below:

(a) Universal waste batteries, i.e., each battery, or a container in which the batteries are contained, must be labeled or marked clearly with the following phrase: "Universal Waste Battery" or "Universal Waste Batteries";

(b) A container, or multiple container package unit, tank, transport vehicle or vessel in which recalled universal waste pesticides as described in section 16-1.3(a)(1) are contained must be labeled or marked clearly with:

(1) The label that was on or accompanied the product as sold or distributed; and

(2) The words "Universal Waste Pesticide" or "Universal Waste Pesticides";

(c) A container, tank, or transport vehicle or vessel in which unused pesticide products as described in section 16-1.3(a)(2) are contained must be labeled or marked clearly with:

(1)(i) The label that was on the product when purchased, if still legible;

(ii) If using the labels described in paragraph (c)(1)(i) of this section is not feasible, the appropriate label as required under the Department of Transportation regulation 49 CFR part 172;

(iii) If using the labels described in paragraphs (c)(1) (i) and (ii) of this section is not feasible, another label prescribed or designated by the waste pesticide collection program administered or recognized by a state; and

(2) The words "Universal Waste-Pesticide" or "Universal Waste Pesticides."

(d)(1) Universal waste mercury-containing equipment (i.e., each device), or a container in which the equipment is contained, must be labeled or marked clearly with any of the following phrases: "Universal Waste-Mercury Containing Equipment," "Waste Mercury-Containing Equipment," or "Used Mercury-Containing Equipment."

~~[Universal waste thermostats, i.e., each thermostat, or a container in which the thermostats are contained, must be labeled or marked clearly with the following phrase: "Universal Waste Mercury Thermostat" or "Universal Waste Mercury Thermostats."]~~

~~(2) A universal waste mercury-containing thermostat or container containing only universal waste mercury-containing thermostats may be labeled or marked clearly with any of the following phrases: "Universal Waste-Mercury Thermostat(s)," "Waste Mercury-Containing Thermostat(s)," or Used Mercury Thermostat(s)."~~

~~(e) Each lamp or a container or package in which such lamps are contained shall be labeled or marked clearly with one of the following phrases: "Universal Waste - Lamp(s)," or "Waste Lamp(s)," or "Used Lamp(s)."~~

#### 2.6 ACCUMULATION TIME LIMITS

(a) A small quantity handler of universal waste may accumulate universal waste for no longer than one year from the date the universal waste is generated, or received from another handler, unless the requirements of paragraph (b) of this section are met.

(b) A small quantity handler of universal waste may accumulate universal waste for longer than one year from the date the universal waste is generated, or received from another handler, if such activity is solely for the purpose of accumulation of such quantities of universal waste as necessary to facilitate proper recovery, treatment, or disposal. However, the handler bears the burden of proving that such activity is solely for the purpose of accumulation of such quantities of universal waste as necessary to facilitate proper recovery, treatment, or disposal.

(c) A small quantity handler of universal waste who accumulates universal waste must be able to demonstrate the length of time that the universal waste has been accumulated from the date it becomes a waste or is received. The handler may make this demonstration by:

(1) Placing the universal waste in a container and marking or labeling the container with the earliest date that any universal waste in the container became a waste or was received;

(2) ~~Marking or labeling each individual item of universal waste (e.g., each battery or thermostat) with the date it became a waste or was received, [Marking or labeling each individual item of universal waste, e.g., each battery, lamp, or thermostat with the date it became a waste or was received;]~~

(3) Maintaining an inventory system on-site that identifies the date each universal waste became a waste or was received;

(4) Maintaining an inventory system on-site that identifies the earliest date that any universal waste in a group of universal waste items or a group of containers of universal waste became a waste or was received;

(5) Placing the universal waste in a specific accumulation area and identifying the earliest date that any universal waste in the area became a waste or was received; or

(6) Any other method which clearly demonstrates the length of time that the universal waste has been accumulated from the date it becomes a waste or is received.

#### 2.7 EMPLOYEE TRAINING

A small quantity handler of universal waste must inform all employees who handle or have responsibility for managing universal waste. The information must describe proper handling and emergency procedures appropriate to the type, or types of universal waste handled at the facility.

#### 2.8 RESPONSE TO RELEASES

(a) A small quantity handler of universal waste must immediately contain all releases of universal wastes and other residues from universal wastes.

(b) A small quantity handler of universal waste must determine whether any material resulting from the release is hazardous waste, and if so, must manage the hazardous waste in compliance with all applicable requirements of R315-1 through R315-101. The handler is considered the generator of the material resulting from the release, and must manage it in compliance with R315-5.

#### 2.9 OFF-SITE SHIPMENTS

(a) A small quantity handler of universal waste is prohibited from sending or taking universal waste to a place other than another universal waste handler, a destination facility, or a foreign destination.

(b) If a small quantity handler of universal waste self-transport universal waste off-site, the handler becomes a universal waste transporter for those self-transportation activities and must comply with the transporter requirements of section 16-4 of this rule while transporting the universal waste.

(c) If a universal waste being offered for off-site transportation meets the definition of hazardous materials under 49 CFR parts 171 through 180, a small quantity handler of universal waste must package, label, mark and placard the shipment, and prepare the proper shipping papers in accordance with the applicable Department of Transportation regulations under 49 CFR parts 172 through 180;

(d) Prior to sending a shipment of universal waste to another universal waste handler, the originating handler must ensure that the receiving handler agrees to receive the shipment.

(e) If a small quantity handler of universal waste sends a shipment of universal waste to another handler or to a destination facility and the shipment is rejected by the receiving handler or destination facility, the originating handler must either:

(1) Receive the waste back when notified that the shipment has been rejected, or

(2) Agree with the receiving handler on a destination facility to which the shipment will be sent.

(f) A small quantity handler of universal waste may reject a shipment containing universal waste, or a portion of a shipment containing universal waste that he has received from another handler. If a handler rejects a shipment or a portion of a shipment, he must contact the originating handler to notify him of the rejection and to discuss reshipment of the load. The handler must:

(1) Send the shipment back to the originating handler, or

(2) If agreed to by both the originating and receiving handler, send the shipment to a destination facility.

(g) If a small quantity handler of universal waste receives a shipment containing hazardous waste that is not a universal waste, the handler must immediately notify the Division of Solid and Hazardous Waste of the illegal shipment, and provide the name, address, and phone number of the originating shipper. The Division will provide instructions for managing the hazardous waste.

(h) If a small quantity handler of universal waste receives a shipment of non-hazardous, non-universal waste, the handler may manage the waste in any way that is in compliance with applicable federal, state or local solid waste regulations.

#### 2.10 TRACKING UNIVERSAL WASTE SHIPMENTS

A small quantity handler of universal waste is not required to keep records of shipments of universal waste.

### 2.11 EXPORTS

A small quantity handler of universal waste who sends universal waste to a foreign destination other than to those OECD countries specified in R315-5-5, which incorporates by reference 40 CFR 262.58(a)(1), in which case the handler is subject to the requirements of R315-5-8, which incorporates by reference 40 CFR 262 subpart H, must:

(a) Comply with the requirements applicable to a primary exporter in 40 CFR 262.53, 262.56(a)(1) through (4) and (6), 262.53(b), and 262.57, as incorporated by reference at R315-5-5;

(b) Export such universal waste only upon consent of the receiving country and in conformance with the EPA Acknowledgment of Consent as defined in 40 CFR part 262 subpart E, as incorporated by reference at R315-5-5; and

(c) Provide a copy of the EPA Acknowledgment of Consent for the shipment to the transporter transporting the shipment for export.

### 2.12 TESTING REQUIREMENTS

A determination of whether or not mercury-containing lamps are hazardous waste shall be performed by a Utah certified laboratory using the Toxicity Characteristic Leaching Procedure according to:

(a) R315-50-7, which incorporates the requirements of 40 CFR 261, Appendix II, 1993 ed.; and

(b) the Science Applications International Corporation report, "Analytical Results of Mercury in Fluorescent Lamps," section 6.0, "Summary Guidelines for the Extraction of Fluorescent Lamps," 1992, prepared for the U.S. Environmental Protection Agency, which is adopted and incorporated by reference.

## **R315-16-3. Standards for Large Quantity Handlers of Universal Waste.**

### 3.1 APPLICABILITY

This section applies to large quantity handlers of universal waste as defined in section 16-1.9.

### 3.2 PROHIBITIONS

A large quantity handler of universal waste is:

(a) Prohibited from disposing of universal waste; and

(b) Prohibited from diluting or treating universal waste, except by responding to releases as provided in section 16-3.8; or by managing specific wastes as provided in section 16-3.4.

### 3.3 NOTIFICATION

(a)(1) Except as provided in paragraphs (a)(2) and (3) of this section, a large quantity handler of universal waste must have sent written notification of universal waste management to the Executive Secretary, and received an EPA Identification Number, before meeting or exceeding the 5,000 kilogram storage limit.

(2) A large quantity handler of universal waste who has already notified the Division of his hazardous waste management activities and has received an EPA Identification Number is not required to renotify under this section.

(3) A large quantity handler of universal waste who manages recalled universal waste pesticides as described in section 16-1.3(a)(1) and who has sent notification to EPA as required by 40 CFR part 165 is not required to notify for those recalled universal waste pesticides under this section.

(b) This notification must include:

(1) The universal waste handler's name and mailing address;

(2) The name and business telephone number of the person at the universal waste handler's site who should be contacted regarding universal waste management activities;

(3) The address or physical location of the universal waste management activities;

(4) A list of all of the types of universal waste managed by the handler, (e.g., batteries, pesticides, ~~thermostats~~ mercury-containing equipment, lamps) ~~and~~;

(5) A statement indicating that the handler is accumulating more than 5,000 kilograms of universal waste at one time. ~~[-and the types of universal waste, e.g., batteries, pesticides, thermostats, and lamps, the handler is accumulating above this quantity.]~~

### 3.4 WASTE MANAGEMENT

(a) Universal waste batteries. A large quantity handler of universal waste must manage universal waste batteries in a way that prevents releases of any universal waste or component of a universal waste to the environment, as follows:

(1) A large quantity handler of universal waste must contain any universal waste battery that shows evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions in a container. The container must be closed, structurally sound, compatible with the contents of the battery, and must lack evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions.

(2) A large quantity handler of universal waste may conduct the following activities as long as the casing of each individual battery cell is not breached and remains intact and closed, except that cells may be opened to remove electrolyte but must be immediately closed after removal:

(i) Sorting batteries by type;

(ii) Mixing battery types in one container;

(iii) Discharging batteries so as to remove the electric charge;

(iv) Regenerating used batteries;

(v) Disassembling batteries or battery packs into individual batteries or cells;

(vi) Removing batteries from consumer products; or

(vii) Removing electrolyte from batteries.

(3) A large quantity handler of universal waste who removes electrolyte from batteries, or who generates other solid waste, e.g., battery pack materials, discarded consumer products as a result of the activities listed above, must determine whether the electrolyte or other solid waste, or both, exhibits a characteristic of hazardous waste identified in R315-2-9.

(i) If the electrolyte or other solid waste exhibits a characteristic of hazardous waste, it must be managed in compliance with all applicable requirements of R315-1 through R315-101. The handler is considered the generator of the hazardous electrolyte or other waste and is subject to R315-5.

(ii) If the electrolyte or other solid waste is not hazardous, the handler may manage the waste in any way that is in compliance with applicable federal, state or local solid waste regulations.

(b) Universal waste pesticides. A large quantity handler of universal waste must manage universal waste pesticides in a way that prevents releases of any universal waste or component of a universal waste to the environment. The universal waste pesticides must be contained in one or more of the following:

(1) A container that remains closed, structurally sound, compatible with the pesticide, and that lacks evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions; or

(2) A container that does not meet the requirements of paragraph (b)(1) of this section, provided that the unacceptable container is overpacked in a container that does meet the requirements of paragraph (b)(1) of this section; or

(3) A tank that meets the requirements of R315-7-17, which incorporates by reference 40 CFR part 265 subpart J, excluding the requirements of 40 CFR 265.197(c), 265.200, and 265.201; or

(4) A transport vehicle or vessel that is closed, structurally sound, compatible with the pesticide, and that lacks evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions.

(c) Mercury-containing equipment. A large quantity handler of universal waste must manage universal waste mercury-containing equipment in a way that prevents releases of any universal waste or component of a universal waste to the environment, as follows: [~~Universal waste thermostats. A large quantity handler of universal waste must manage universal waste thermostats in a way that prevents releases of any universal waste or component of a universal waste to the environment, as follows:~~]

(1) A large quantity handler of universal waste must contain any universal waste [~~thermostat~~] mercury-containing equipment with non-contained elemental mercury or that shows evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions in a container. The container must be closed, structurally sound, compatible with the contents of the of the device, [thermostat, and] must lack evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions[-], and must be reasonable designed to prevent the escape of mercury into the environment by volatilization or any other means.

(2) A large quantity handler of universal waste may remove mercury-containing ampules from universal waste [~~thermostats~~] mercury-containing equipment provided the handler:

(i) Removes the ampules in a manner designed to prevent breakage of the ampules;

(ii) Removes ampules only over or in a containment device, (e.g., tray or pan sufficient to contain any mercury released from an ampule in case of breakage);

(iii) Ensures that a mercury clean-up system is readily available to immediately transfer any mercury resulting from spills or leaks from broken ampules, from the containment device to a container that meets the requirements of R315-5-3.34;

(iv) Immediately transfers any mercury resulting from spills or leaks from broken ampules from the containment device to a container that meets the requirements of R315-5-3.34;

(v) Ensures that the area in which ampules are removed is well ventilated and monitored to ensure compliance with applicable OSHA exposure levels for mercury;

(vi) Ensures that employees removing ampules are thoroughly familiar with proper waste mercury handling and emergency procedures, including transfer of mercury from containment devices to appropriate containers;

(vii) Stores removed ampules in closed, non-leaking containers that are in good condition;

(viii) Packs removed ampules in the container with packing materials adequate to prevent breakage during storage, handling, and transportation; and

~~[(3)(i) A large quantity handler of universal waste who removes mercury-containing ampules from thermostats must determine whether the following exhibit a characteristic of hazardous waste identified in R315-2-9:~~

~~\_\_\_\_\_ (A) Mercury or clean-up residues resulting from spills or leaks; or~~

~~\_\_\_\_\_ (B) Other solid waste generated as a result of the removal of mercury-containing ampules, e.g., remaining thermostat units.~~

~~\_\_\_\_\_ (ii) If the mercury, residues, or other solid waste exhibit a characteristic of hazardous waste, it must be managed in compliance with all applicable requirements of R315-1 through R315-101. The handler is considered the generator of the mercury, residues, or other waste and is subject to R315-5.~~

~~\_\_\_\_\_ (iii) If the mercury, residues, or other solid waste is not hazardous, the handler may manage the waste in any way that is in compliance with applicable federal, state or local solid waste regulations.](3) A large quantity handler of universal waste~~

mercury-containing equipment that does not contain an ampule may remove the open original housing holding the mercury from universal waste mercury-containing equipment provided the handler:

(i) Immediately seals the original housing holding the mercury with an air-tight seal to prevent the release of any mercury to the environment; and

(ii) Follows all requirements for removing ampules and managing removed ampules under paragraph (c)(2) of this section; and

(4) (i) A large quantity handler of universal waste who removes mercury-containing ampules from mercury-containing equipment or seals mercury from mercury-containing equipment in its original housing must determine whether the following exhibit a characteristic of hazardous waste identified in 40 CFR part 261, subpart C:

\_\_\_\_\_ (A) Mercury or clean-up residues resulting from spills or leaks and/or

\_\_\_\_\_ (B) Other solid waste generated as a result of the removal of mercury-containing ampules or housings ( e.g. , the remaining mercury-containing device).

\_\_\_\_\_ (ii) If the mercury, residues, and/or other solid waste exhibits a characteristic of hazardous waste, it must be managed in compliance with all applicable requirements of 40 CFR parts 260 through 272. The handler is considered the generator of the mercury, residues, and/or other waste and must manage it in compliance with 40 CFR part 262.

\_\_\_\_\_ (iii) If the mercury, residues, and/or other solid waste is not hazardous, the handler may manage the waste in any way that is in compliance with applicable federal, state or local solid waste regulations.

(d) Lamps. A large quantity handler of universal waste shall manage lamps in a way that prevents releases of any universal waste or component of a universal waste to the environment, as follows:

(1) A large quantity handler of universal waste shall contain any lamp in containers or packages that are structurally sound, adequate to prevent breakage, and compatible with the contents of the lamps. Such containers and packages shall remain closed and shall lack evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions.

(2) A large quantity handler of universal waste shall immediately clean up and place in a container any lamp that is broken and shall place in a container any lamp that shows evidence of breakage, leakage, or damage that could cause the release of mercury or other hazardous constituents to the environment. Containers shall be closed, structurally sound, compatible with the contents of the lamps and shall lack evidence of leakage, spillage, or damage that could cause leakage or releases of mercury or other hazardous constituents to the environment under reasonably foreseeable conditions.

### 3.5 LABELING/MARKING

A large quantity handler of universal waste must label or mark the universal waste to identify the type of universal waste as specified below:

(a) Universal waste batteries, i.e., each battery, or a container or tank in which the batteries are contained, must be labeled or marked clearly with the following phrase: "Universal Waste Battery" or "Universal Waste Batteries";

(b) A container, or multiple container package unit, tank, transport vehicle or vessel in which recalled universal waste pesticides as described in R315-16-1-3(a)(1) are contained must be labeled or marked clearly with:

(1) The label that was on or accompanied the product as sold or distributed; and

(2) The words "Universal Waste Pesticide" or "Universal Waste Pesticides";

(c) A container, tank, or transport vehicle or vessel in which unused pesticide products as described in R315-16-1-3(a)(2) are contained must be labeled or marked clearly with:

(1)(i) The label that was on the product when purchased, if still legible;

(ii) If using the labels described in paragraph (c)(1)(i) of this section is not feasible, the appropriate label as required under the Department of Transportation regulation 49 CFR part 172;

(iii) If using the labels described in paragraphs (c)(1)(i) and (1)(ii) of this section is not feasible, another label prescribed or designated by the pesticide collection program; and

(2) The words "Universal Waste Pesticide" or "Universal Waste Pesticides".

~~[(d) Universal waste thermostats, i.e., each thermostat, or a container or tank in which the thermostats are contained, must be labeled or marked clearly with the following phrase: "Universal Waste Mercury Thermostat" or "Universal Waste Mercury Thermostats".](d) (1) Mercury-containing equipment ( i.e., each device), or a container in which the equipment is contained, must be labeled or marked clearly with any of the following phrases: "Universal Waste -- Mercury Containing Equipment," "Waste Mercury-Containing Equipment," or "Used Mercury-Containing Equipment."~~

~~(2) A universal waste mercury-containing thermostat or container containing only universal waste mercury-containing thermostats may be labeled or marked clearly with any of the following phrases: "Universal Waste -- Mercury Thermostat(s)," "Waste Mercury Thermostat(s)," or "Used Mercury Thermostat(s)."~~

(e) Each lamp or a container or package in which such lamps are contained shall be labeled or marked clearly with any one of the following phrases: "Universal Waste - Lamp(s)," or "Waste Lamp(s)," or "Used Lamp(s)."

### 3.6 ACCUMULATION TIME LIMITS

(a) A large quantity handler of universal waste may accumulate universal waste for no longer than one year from the date the universal waste is generated, or received from another handler, unless the requirements of paragraph (b) of this section are met.

(b) A large quantity handler of universal waste may accumulate universal waste for longer than one year from the date the universal waste is generated, or received from another handler, if such activity is solely for the purpose of accumulation of such quantities of universal waste as necessary to facilitate proper recovery, treatment, or disposal. However, the handler bears the burden of proving that such activity was solely for the purpose of accumulation of such quantities of universal waste as necessary to facilitate proper recovery, treatment, or disposal.

(c) A large quantity handler of universal waste must be able to demonstrate the length of time that the universal waste has been accumulated from the date it becomes a waste or is received. The handler may make this demonstration by:

(1) Placing the universal waste in a container and marking or labeling the container with the earliest date that any universal waste in the container became a waste or was received;

(2) Marking or labeling the individual item of universal waste, e.g., each battery, lamp, or thermostat[*y*] with the date it became a waste or was received;

(3) Maintaining an inventory system on-site that identifies the date the universal waste being accumulated became a waste or was received;

(4) Maintaining an inventory system on-site that identifies the earliest date that any universal waste in a group of universal waste items or a group of containers of universal waste became a waste or was received;

(5) Placing the universal waste in a specific accumulation area and identifying the earliest date that any universal waste in the area became a waste or was received; or

(6) Any other method which clearly demonstrates the length of time that the universal waste has been accumulated from the date it becomes a waste or is received.

### 3.7 EMPLOYEE TRAINING

A large quantity handler of universal waste must ensure that all employees are thoroughly familiar with proper waste handling and emergency procedures, relative to their responsibilities during normal facility operations and emergencies.

### 3.8 RESPONSE TO RELEASES

(a) A large quantity handler of universal waste must immediately contain all releases of universal wastes and other residues from universal wastes.

(b) A large quantity handler of universal waste must determine whether any material resulting from the release is hazardous waste, and if so, must manage the hazardous waste in compliance with all applicable requirements of R315-1 through R315-101. The handler is considered the generator of the material resulting from the release, and is subject to R315-5.

### 3.9 OFF-SITE SHIPMENTS

(a) A large quantity handler of universal waste is prohibited from sending or taking universal waste to a place other than another universal waste handler, a destination facility, or a foreign destination.

(b) If a large quantity handler of universal waste self-transport universal waste off-site, the handler becomes a universal waste transporter for those self-transportation activities and must

comply with the transporter requirements of section 16-4 while transporting the universal waste.

(c) If a universal waste being offered for off-site transportation meets the definition of hazardous materials under 49 CFR 171 through 180, a large quantity handler of universal waste must package, label, mark and placard the shipment, and prepare the proper shipping papers in accordance with the applicable Department of Transportation regulations under 49 CFR parts 172 through 180;

(d) Prior to sending a shipment of universal waste to another universal waste handler, the originating handler must ensure that the receiving handler agrees to receive the shipment.

(e) If a large quantity handler of universal waste sends a shipment of universal waste to another handler or to a destination facility and the shipment is rejected by the receiving handler or destination facility, the originating handler must either:

(1) Receive the waste back when notified that the shipment has been rejected, or

(2) Agree with the receiving handler on a destination facility to which the shipment will be sent.

(f) A large quantity handler of universal waste may reject a shipment containing universal waste, or a portion of a shipment containing universal waste that he has received from another handler. If a handler rejects a shipment or a portion of a shipment, he must contact the originating handler to notify him of the rejection and to discuss reshipment of the load. The handler must:

(1) Send the shipment back to the originating handler, or

(2) If agreed to by both the originating and receiving handler, send the shipment to a destination facility.

(g) If a large quantity handler of universal waste receives a shipment containing hazardous waste that is not a universal waste, the handler must immediately notify the Division of the illegal shipment, and provide the name, address, and phone number of the originating shipper. The Division will provide instructions for managing the hazardous waste.

(h) If a large quantity handler of universal waste receives a shipment of non-hazardous, non-universal waste, the handler may manage the waste in any way that is in compliance with applicable federal, state or local solid waste regulations.

### 3.10 TRACKING UNIVERSAL WASTE SHIPMENTS

(a) Receipt of shipments. A large quantity handler of universal waste must keep a record of each shipment of universal waste received at the facility. The record may take the form of a log, invoice, manifest, bill of lading, or other shipping document. The record for each shipment of universal waste received must include the following information:

(1) The name and address of the originating universal waste handler or foreign shipper from whom the universal waste was sent;

(2) The quantity of each type of universal waste received, e.g., batteries, pesticides, lamps, or thermostats;

(3) The date of receipt of the shipment of universal waste.

(b) Shipments off-site. A large quantity handler of universal waste must keep a record of each shipment of universal waste sent from the handler to other facilities. The record may take the form of a log, invoice, manifest, bill of lading or other shipping document. The record for each shipment of universal waste sent must include the following information:

(1) The name and address of the universal waste handler, destination facility, or foreign destination to whom the universal waste was sent;

(2) The quantity of each type of universal waste sent, e.g., batteries, pesticides, thermostats, or lamps;

(3) The date the shipment of universal waste left the facility.

(c) Record retention.

(1) A large quantity handler of universal waste must retain the records described in paragraph (a) of this section for at least three years from the date of receipt of a shipment of universal waste.

(2) A large quantity handler of universal waste must retain the records described in paragraph (b) of this section for at least three years from the date a shipment of universal waste left the facility.

### 3.11 EXPORTS

A large quantity handler of universal waste who sends universal waste to a foreign destination other than to those OECD countries specified in R315-5-5, which incorporates by reference 40 CFR 262.58(a)(1), in which case the handler is subject to the requirements of R315-5-8, which incorporates by reference 40 CFR 262 subpart H, must:

(a) Comply with the requirements applicable to a primary exporter in R315-5-5;

(b) Export such universal waste only upon consent of the receiving country and in conformance with the EPA Acknowledgement of Consent as defined in subpart E of 40 CFR, part 262, as incorporated by reference at R315-5-5; and

(c) Provide a copy of the EPA Acknowledgement of Consent for the shipment to the transporter transporting the shipment for export.

### 3.12 TESTING REQUIREMENTS

A determination of whether or not mercury-containing lamps are hazardous waste shall be performed by a Utah certified laboratory using the Toxicity Characteristic Leaching Procedure according to:

(a) R315-50-7, which incorporates the requirements of 40 CFR 261, Appendix II, 1993 ed.; and

(b) the Science Applications International Corporation report, "Analytical Results of Mercury in Fluorescent Lamps," section 6.0, "Summary Guidelines for the Extraction of Fluorescent Lamps," which is adopted and incorporated by reference.

## R315-16-4. Standards for Universal Waste Transporters.

### 4.1 APPLICABILITY

This section applies to universal waste transporters, as defined in R315-16-1.9.

### 4.2 PROHIBITIONS

A universal waste transporter is:

(a) Prohibited from disposing of universal waste; and

(b) Prohibited from diluting or treating universal waste, except by responding to releases as provided in section 16-4.5.

### 4.3 WASTE MANAGEMENT

(a) A universal waste transporter must comply with all applicable U.S. Department of Transportation regulations in 49 CFR part 171 through 180 for transport of any universal waste that meets the definition of hazardous material in 49 CFR 171.8. For purposes of the Department of Transportation regulations, a material is considered a hazardous waste if it is subject to the Hazardous Waste Manifest Requirements of the U.S. Environmental Protection Agency specified in 40 CFR part 262. Because universal waste does not require a hazardous waste manifest, it is not considered hazardous waste under the Department of Transportation regulations.

(b) Some universal waste materials are regulated by the Department of Transportation as hazardous materials because they

meet the criteria for one or more hazard classes specified in 49 CFR 173.2. As universal waste, shipments do not require a manifest under 40 CFR 262, they may not be described by the DOT proper shipping name "hazardous waste, (l) or (s), n.o.s.", nor may the hazardous material's proper shipping name be modified by adding the word "waste."

#### 4.4 ACCUMULATION TIME LIMITS

(a) A universal waste transporter may only store the universal waste at a universal waste transfer facility for ten days or less.

(b) If a universal waste transporter stores universal waste for more than ten days, the transporter becomes a universal waste handler and must comply with the applicable requirements of sections 16-2 or 16-3 of this rule while storing the universal waste.

#### 4.5 RESPONSE TO RELEASES

(a) A universal waste transporter must immediately contain all releases of universal wastes and other residues from universal wastes.

(b) A universal waste transporter must determine whether any material resulting from the release is hazardous waste, and if so, it is subject to all applicable requirements of R315-1 through R315-101. If the waste is determined to be a hazardous waste, the transporter is subject to R315-5.

#### 4.6 OFF-SITE SHIPMENTS

(a) A universal waste transporter is prohibited from transporting the universal waste to a place other than a universal waste handler, a destination facility, or a foreign destination.

(b) If the universal waste being shipped off-site meets the Department of Transportation's definition of hazardous materials under 49 CFR 171.8, the shipment must be properly described on a shipping paper in accordance with the applicable Department of Transportation regulations under 49 CFR part 172.

#### 4.7 EXPORTS

A universal waste transporter transporting a shipment of universal waste to a foreign destination other than to those OECD countries specified in R315-5-5, which incorporates by reference 40 CFR 262.58(a)(1), in which case the transporter is subject to the requirements of R315-5-8, which incorporates by reference 40 CFR 262 subpart H, may not accept a shipment if the transporter knows the shipment does not conform to the EPA Acknowledgment of Consent. In addition the transporter must ensure that:

(a) A copy of the EPA Acknowledgment of Consent accompanies the shipment; and

(b) The shipment is delivered to the facility designated by the person initiating the shipment.

### **R315-16-5. Standards for Destination Facilities.**

#### 5.1 APPLICABILITY

(a) The owner or operator of a destination facility as defined in section 16-1.9 is subject to all applicable requirements of R315-3, R315-7, R315-8, R315-13, R315-14, and the notification requirement under section 3010 of RCRA.

(b) The owner or operator of a destination facility that recycles a particular universal waste without storing that universal waste before it is recycled must comply with 40 CFR 261.6(c)(2), as incorporated by reference at R315-2-6.

#### 5.2 OFF-SITE SHIPMENTS

(a) The owner or operator of a destination facility is prohibited from sending or taking universal waste to a place other than

a universal waste handler, another destination facility or foreign destination.

(b) The owner or operator of a destination facility may reject a shipment containing universal waste, or a portion of a shipment containing universal waste. If the owner or operator of the destination facility rejects a shipment or a portion of a shipment, he must contact the shipper to notify him of the rejection and to discuss reshipment of the load. The owner or operator of the destination facility must:

(1) Send the shipment back to the original shipper, or

(2) If agreed to by both the shipper and the owner or operator of the destination facility, send the shipment to another destination facility.

(c) If the a owner or operator of a destination facility receives a shipment containing hazardous waste that is not a universal waste, the owner or operator of the destination facility must immediately notify the appropriate regional EPA office of the illegal shipment, and provide the name, address, and phone number of the shipper. The Division will provide instructions for managing the hazardous waste.

(d) If the owner or operator of a destination facility receives a shipment of non-hazardous, non-universal waste, the owner or operator may manage the waste in any way that is in compliance with applicable federal or state solid waste regulations.

#### 5.3 TRACKING UNIVERSAL WASTE SHIPMENTS.

(a) The owner or operator of a destination facility must keep a record of each shipment of universal waste received at the facility. The record may take the form of a log, invoice, manifest, bill of lading, or other shipping document. The record for each shipment of universal waste received must include the following information:

(1) The name and address of the universal waste handler, destination facility, or foreign shipper from whom the universal waste was sent;

(2) The quantity of each type of universal waste received, e.g., batteries, pesticides, thermostats, or lamps;

(3) The date of receipt of the shipment of universal waste.

(b) The owner or operator of a destination facility must retain the records described in paragraph (a) of this section for at least three years from the date of receipt of a shipment of universal waste.

### **R315-16-6. Import Requirements.**

Persons managing universal waste that is imported from a foreign country into the United States are subject to the applicable requirements of this rule, immediately after the waste enters the United States, as indicated in paragraphs (a) through (c) of this section:

(a) A universal waste transporter is subject to the universal waste transporter requirements of section 16-4 of this rule.

(b) A universal waste handler is subject to the small or large quantity handler of universal waste requirements of sections 16-2 or 16-3, as applicable.

(c) An owner or operator of a destination facility is subject to the destination facility requirements of section 16-5 of this rule.

(d) Persons managing universal waste that is imported from an OECD country as specified in R315-5-5, which incorporates by reference 40 CFR 262,58(a)(1), are subject to paragraphs (a) through (c) of this section, in addition to the requirements of R315-5-8, which incorporates by reference 40 CFR 262, subpart H.

**R315-16-7. Petitions to Include Other Wastes Under R315-16.****7.1 GENERAL**

(a) Any person seeking to add a hazardous waste or a category of hazardous waste to R315-16 may petition for a regulatory amendment under this section and R315-2.

(b) To be successful, the petitioner must demonstrate to the satisfaction of the Executive Secretary that regulation under the universal waste regulations of R315-16 is: appropriate for the waste or category of waste; will improve management practices for the waste or category of waste; and will improve implementation of the hazardous waste program. The petition must include the information required by R315-2-17(b). The petition should also address as many of the factors listed in R315-16-7.2 as are appropriate for the waste or waste category addressed in the petition.

(c) The Executive Secretary will evaluate petitions using the factors listed in R315-16-7.2. The Executive Secretary will grant or deny a petition using the factors listed in section 16-7-2. The decision will be based on the weight of evidence showing that regulation under R315-16 is appropriate for the waste or category of waste, will improve management practices for the waste or category of waste, and will improve implementation of the hazardous waste program.

(d) The Executive Secretary may request additional information needed to evaluate the merits of the petition.

**7.2 FACTORS FOR PETITIONS TO INCLUDE OTHER WASTES UNDER R315-16**

(a) The waste or category of waste, as generated by a wide variety of generators, is listed in R315-2-10, 2-11, and 2-26 (which incorporate by reference 40 CFR 261 Subpart D), and R315-2-24, or if not listed, a proportion of the waste stream exhibits one or more characteristics of hazardous waste identified in R315-2-9. When a characteristic waste is added to the universal waste regulations of R315-16 by using a generic name to identify the waste category, e.g., batteries, the definition of universal waste in section 16-1.9 will be amended to include only the hazardous waste portion of the waste category, e.g., hazardous waste batteries. Thus, only the portion of the waste stream that does exhibit one or more characteristics, i.e., is hazardous waste, is subject to the universal waste regulations of R315-16;

(b) The waste or category of waste is not exclusive to a specific industry or group of industries, is commonly generated by a wide variety of types of establishments, including, for example, households, retail and commercial businesses, office complexes, conditionally exempt small quantity generators, small businesses, government organizations, as well as large industrial facilities;

(c) The waste or category of waste is generated by a large number of generators, e.g., more than 1,000 nationally, and is frequently generated in relatively small quantities by each generator;

(d) Systems to be used for collecting the waste or category of waste, including packaging, marking, and labeling practices, would ensure close stewardship of the waste;

(e) The risk posed by the waste or category of waste during accumulation and transport is relatively low compared to other hazardous wastes, and specific management standards proposed or referenced by the petitioner, e.g., waste management requirements appropriate to be added to R315-16, sections 2.4, 3.4, and 4.3; and applicable Department of Transportation requirements would be protective of human health and the environment during accumulation and transport;

(f) Regulation of the waste or category of waste under R315-16 will increase the likelihood that the waste will be diverted from non-hazardous waste management systems, e.g., the municipal waste stream, non-hazardous industrial or commercial waste stream, and municipal sewer or stormwater systems, to recycling, treatment, or disposal in compliance with Utah Code Annotated 19-6.

(g) Regulation of the waste or category of waste under R315-16 will improve implementation of and compliance with the hazardous waste regulatory program; and

(h) Such other factors as may be appropriate.

**KEY: hazardous waste**

**Date of Enactment or Last Substantive Amendment:** [~~August 15, 2002~~]2012

**Notice of Continuation:** July 19, 2005

**Authorizing, and Implemented or Interpreted Law:** 19-6-105; 19-6-106

**Governor, Planning and Budget,  
Inspector General of Medicaid Services  
(Office of)  
R367-1  
Office of Inspector General of Medicaid  
Services**

**NOTICE OF PROPOSED RULE**

(New Rule)

DAR FILE NO.: 35879

FILED: 02/15/2012

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** The purpose of this rule is to implement the initial administrative rules for the Office.

**SUMMARY OF THE RULE OR CHANGE:** This rule contains the duties, practices, policies, and procedures for the Office of Inspector General (OIG).

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Title 63, Chapter 4

**MATERIALS INCORPORATED BY REFERENCES:**

- ◆ Adds 42 USC 139a(1)(3), published by Government Printing Office, 2011
- ◆ Adds 42 CFR 431.107(b)(2), published by Government Printing Office, 2011
- ◆ Adds 42 CFR 456 Subpart 6, published by Government Printing Office, 2011
- ◆ Adds 42 CFR 455.13, published by Government Printing Office, 2011
- ◆ Adds 42 CFR 431 Subpart E, published by Government Printing Office, 2011

- ◆ Adds 42 CFR 455.21, published by Government Printing Office, 2011
- ◆ Adds 42 CFR 1007, published by Government Printing Office, 2011

**ANTICIPATED COST OR SAVINGS TO:**

- ◆ **THE STATE BUDGET:** The implementation of Rule R367-1 will not have any aggregate cost to the state budget. The rule further clarifies the duties and procedures of the Office of Inspector General outlined in Sections 63J-4a-101 through 63J-4a-602. No other expense is created by the issuance of this rule. There will be savings to the state budget, this rule will further assist the OIG to recoup and recovery misappropriated Medicaid funds. This amount will vary year to year based upon the results of the audits.
- ◆ **LOCAL GOVERNMENTS:** The promulgation of this rule will not result in direct and measurable costs for local governments. Local governments are not involved in the Medicaid Program. Additionally, the OIG will be collecting wrongfully acquired Medicaid funds. These are funds that the local governments were not originally entitled to; any funds paid by the local government, if any, would be a reimbursement of state and federal money.
- ◆ **SMALL BUSINESSES:** The promulgation of this rule will not result in direct and measurable costs for small businesses. The OIG will be collecting wrongfully acquired Medicaid funds from small and solo practice medical providers. These are funds that the providers were not originally entitled to; any monies paid by the providers to the OIG, if any, would be a reimbursement of state funds. Therefore, there would be no additional costs to small businesses, just a reimbursement to the state.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** The promulgation of this rule will not result in direct and measurable costs for other entities. The OIG will be collecting wrongfully acquired Medicaid funds from hospitals, large provider groups, pharmacies. These are funds that the providers were not originally entitled to; any monies paid by the providers to the OIG, if any, would be a reimbursement of state funds. Therefore, there would be no additional costs to small businesses, just a reimbursement to the state.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** Rule R367-1 does not create new compliance costs for any local government or business. There are no regulatory mandates created by this rule. The rule establishes the OIG's duties, audit responsibilities, and administrative hearing processes. Due to this, there is no cost created by the implementation of this rule.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** Rule R367-1 does not create any additional costs to local governments or any businesses. The rule will outline the daily operations of the OIG. The office will seek to recover recoupment of wrongfully or erroneously acquired Medicaid funds. The entities that inappropriately received the monies do not incur additional costs, other than a reimbursement to

the state of the money they were not otherwise entitled to. Further, entities and providers that are assessed a recoupment may have this recoup offset by future payments. This will minimize the impact to daily operations of the provider. The fiscal impact of Rule R367-1 follows the analysis conducted by the Office of Legislative Fiscal Analyst report for H.B. 84 (2011 General Session), which founded the office in July of 2011.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

GOVERNOR  
PLANNING AND BUDGET, INSPECTOR GENERAL  
OF MEDICAID SERVICES (OFFICE OF)  
288 N 1460 W  
SALT LAKE CITY, UT 84116  
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

- ◆ Michael Green by phone at 801-538-6123, by FAX at 801-538-6382, or by Internet E-mail at [mkgreen@utah.gov](mailto:mkgreen@utah.gov)

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 04/02/2012

THIS RULE MAY BECOME EFFECTIVE ON: 04/14/2012

AUTHORIZED BY: Michael Green, Policy and Training Coordinator

**R367. Governor, Planning and Budget, Inspector General of Medicaid Services (Office of).**

**R367-1. Office of Inspector General of Medicaid Services.**

**R367-1-1. Introduction and Authority.**

(1) This rule generally characterizes the scope of the Office of Inspector General of Medicaid Services in Utah, and defines all of the provisions necessary to administer the Office.

(2) The rule is authorized under Section 63J-4a-602 pursuant to Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

(3) If any policy conflict arises between providers and or any party with regard to the Medicaid Program the Utah State Plan under Title XIX of the Social Security Act Medical Assistance Program shall be supreme and govern.

**R367-1-2. Definitions.**

(1) The terms used in this rule are defined in Section 63J-4a-102.

**R367-1-3. The Office of Inspector General.**

(1) The Utah Department of Health is the Single State Agency designated to administer or supervise the administration of the Medicaid program under Title XIX of the federal Social Security Act. The Office of Inspector General must ensure that the Medicaid Program is managed in an efficient and effective manner to minimize fraud, waste, and abuse, in the Medicaid program as outlined in Section 63J-4a-202. The Office of Inspector General

has entered into a Memorandum of Understanding (MOU) with the Department outlining the delegation of duties from the Department to the Office and as required by federal and state statutes.

**R367-1-4. Office Duties.**

(1) The Office of the Inspector General shall perform the following duties:

(a) Adhere to appropriate standards as outlined in the Government Accounting Office's Government Auditing Standards.

(b) The Office will receive reports of potential fraud, waste, or abuse in the state Medicaid program through phone, website, or other electronic means open to the public:

(i) establish a 24-hour, toll free hotline monitored by staff, or voicemail as appropriate.

(ii) establish a separate identifiable email to report fraud, waste or abuse of Medicaid funds.

(c) The Office will investigate and identify potential or actual fraud, waste, or abuse in the state Medicaid program by post payment review of claims paid under fee-for service, managed care, capitation, waiver, contracts or other payment methods where funds are expended by the Department for Medicaid related services or programs.

(d) The Office will obtain, develop, and utilize computer algorithms to identify fraud, waste, or abuse in the state Medicaid program by either developing an in-house program, by contract with private vendors, or other suitable methods as agreed upon with the Department. The Office may also develop in-house programs in consultation with the Department.

(e) The Office will establish an MOU with the Medicaid Fraud Control Unit to identify and recover improperly or fraudulently expended Medicaid funds.

(f) The Office will determine appropriate methodology for identifying risk associated with the Division and its programs under Medicaid funding.

(g) The Office will regularly report to the Department regarding all identified cases of fraud, waste or abuse. The Office will report how the Department can reduce cost or improve performance through changes in policies or claims payment systems. The Office will operate the program integrity function and audit function to the extent possible and as described under a MOU with the Department to be established each state fiscal year beginning in July and ending in June of the following year. The MOU must be renewed each year by both the DOH and OIG.

(h) The Office will establish a means for providers to return payments to the Office. The Office will return all collected overpayments to the Department, except to pay Recovery Audit Contractors.

(i) The Office will provide training to agencies and employees on identifying potential fraud, waste, or abuse of Medicaid funds regularly. All training materials and curriculum will be developed in consultation with the Department and may include Department representation.

**R367-1-5. Incorporations by Reference.**

(1) All rules, regulations, and laws below are incorporated by reference.

(a) 42 CFR 431.107(b)(2)

(b) 42 CFR 456, Subpart B

(c) 42 CFR 455.13

(d) 42 CFR 455.21

(e) 42 CFR 1007

(f) 42 USC 139a(a)(3)

(g) 42 CFR 431, Subpart E

**R367-1-6. Discrimination Prohibited.**

(1) In accordance with Title VI of the Civil Rights Act of 1964 (42 USC 2000d et seq.), Section 504 of the Rehabilitation Act of 1973 (29 USC 70b), and the regulations at 45 CFR Parts 80 and 84, the Office assures that no individual shall be subjected to discrimination under the plan on the grounds of race, color, gender, national origin, or handicap.

**R367-1-7. Utilization Review and Medicaid Services Provided under the Utah Medicaid Program.**

(1) The Office may request records that support provider claims for payment under programs funded through the Department. These requests shall be in writing and identify the records to be reviewed. Written responses to requests must be returned within 30 days of the date of the written request. Responses must include the complete record of all services and supporting services for which reimbursement is claimed. If the provider is unable to produce the documents on request, the provider shall be granted 24 hours to provide all necessary and appropriate information supporting and documenting the need for services. However, if there is no response within the 30 day period, the Office will close the record and will evaluate the payment based on the records available.

(2) The Office may conduct announced or unannounced onsite reviews and visits. On-site reviews require that the provider submit records on request based on 42 CFR 431.107(b)(2). All announced visits will receive reasonable notice from the Office.

(3) The Office shall conduct hospital utilization reviews as outlined in the Department's Superior System Waiver in effect at the time service was rendered.

(a) The Office shall determine medical necessity and appropriateness of inpatient admissions during utilization review by use of InterQual criteria, published by McKesson Corporation, or another suitable industry standard substitute.

(b) The standards in the InterQual criteria, or other suitable industry standard substitute, shall not apply to services in which a determination has been made to utilize criteria customized by the Department or that are excluded as a Medicaid benefit by rule or contract.

(c) Where InterQual or other suitable industry standard substitute criteria are silent, the Office shall approve or deny services based upon appropriate administrative rules or the Department's criteria as incorporated in the Medicaid provider manuals.

(4) Providers shall refund payments to the Office upon written request if any of the following occur:

(a) the Department pays for a service which is later determined not to be a benefit of the Utah Medicaid program; or

\_\_\_\_\_ (b) does not comply with state or federal policies and regulations.

\_\_\_\_\_ (c) If services cannot be properly verified or when a provider refuses to provide or grant access to records.

\_\_\_\_\_ (d) Unless appealed, all refunds must be made to the Office within 30 days of written notification. An appeal of this determination must be filed within 30 days of written notification as specified in Rule R367-1-6.

\_\_\_\_\_ (e) A provider shall reimburse the Office for all overpayments regardless of the reason for the overpayment. Including, but not limited to agency errors, inadvertent errors, or other program errors. The Office may make a request to the Department to deduct an equal amount from future reimbursements.

\_\_\_\_\_ (5) The Office may include monetary penalties, fees for auditing, interest including any applicable and reasonable fees that do not exceed 10% of the total cost of the recovery or identified overpayment.

#### **R367-1-8. Provider and Client Agreements.**

\_\_\_\_\_ (1) The Department contracts with each provider who furnishes services under the Utah Medicaid Program.

\_\_\_\_\_ (2) By signing a provider agreement with the Department, the provider agrees to follow the terms incorporated into the provider agreements, including policies and procedures, provider manuals, Medicaid Information Bulletins, and provider letters.

\_\_\_\_\_ (3) By signing an application for Medicaid coverage, the client agrees that the Department's obligation to reimburse for services is governed by contract between the Department and the provider.

\_\_\_\_\_ (4) The Office will adhere to the agreements between the provider and the Department as long as there is no violation of state and or federal regulations.

#### **R367-1-9. Medicaid Fraud.**

\_\_\_\_\_ (1) The Office establishes and maintains methods, criteria, and procedures that meet all federal and state requirements for prevention, control of program fraud and abuse; and provider sanctioning and termination.

\_\_\_\_\_ (2) The Office will enter into an MOU with The Medicaid Fraud Control Unit and the Department to ensure appropriate measures are established to reduce and prevent fraud and abuse in the Medicaid program.

#### **R367-1-10. Confidentiality.**

\_\_\_\_\_ (1) Title 63G, Chapter 2, and Section 26-1-17.5 impose legal sanctions and provide safeguards that restrict the use or disclosure of information concerning providers, applicants, clients, and recipients to purposes directly connected with the administration of the plan. The Office will adopt those principles through incorporation of the references note.

#### **R367-1-11. Right to Contract with Recovery Audit Organizations.**

\_\_\_\_\_ (1) The Office may contract for the investigation, notification and recovery of overpayments under any funds paid by the Department through the Medicaid program, Title XIX of the Social Security Act, under a contingency fee arrangement not to

exceed the maximum amount set by CMS of the state's share actually recovered from overpayments according to federal regulations.

#### **R367-1-12. Auditing of the Department of Health.**

##### 12.1. Audit Responsibilities.

\_\_\_\_\_ (1) Audits will be conducted under the regular supervision of the Inspector General.

\_\_\_\_\_ (2) The audit reports will then be released to the Director of the Governor's Office of Planning and Budget to which the Inspector General reports administratively.

\_\_\_\_\_ (3) Audits will primarily be determined through a risk assessment approved by the Office.

\_\_\_\_\_ (4) All activities of the Office will remain free of influence from any Department, Division, private or contracted entities.

\_\_\_\_\_ (5) The Office audit group will follow the Generally Accepted Government Auditing Standards (GAGAS) as it relates to audit standards and training.

\_\_\_\_\_ (6) The auditors will immediately notify the Inspector General of any serious deficiency or the suspicion of significant fraud during its review.

\_\_\_\_\_ (7) Pursuant to Utah Code 63J-4a-301 the Office will have unrestricted access to all records of state executive branch entities, all local government entities, and all providers relating directly or indirectly to the state Medicaid program.

##### 12.2. Audit Plan.

\_\_\_\_\_ (1) An audit plan will be prepared by the Office at least annually and shall:

\_\_\_\_\_ (a) Identify the audits to be performed, based on audit risk assessment reviewed annually;

\_\_\_\_\_ (b) Identify resources to be devoted to audits in plan;

\_\_\_\_\_ (c) Ensure that audits evaluate the efficiency and effectiveness of tax payer dollars in the Medicaid program;

\_\_\_\_\_ (d) Determine adequacy of Medicaid's controls over federal and state compliance.

\_\_\_\_\_ (2) An OIG audit shall:

\_\_\_\_\_ (a) Issue regular audit reports on the effectiveness and efficiency of the defined audits within the Medicaid program in Utah;

\_\_\_\_\_ (b) Ensure that such audits are conducted within professional standards such as those defined by the Institute of Internal Auditors and Generally Accepted Governmental Auditing Standards (GAGAS);

\_\_\_\_\_ (c) Report annually to the Governor's office on or before October 1, and to the Utah Legislature before November 30 as stated in 63J-4a-502.

##### 12.3. Access to Records and Employees.

\_\_\_\_\_ (1) In order to fulfill the duties described in Section 63J-4a-202, the Office shall have access to all records of state executive branch entities, all local government entities, and all providers relating, directly or indirectly, as stated in 63J-4a-301. Access to employees that the inspector general determines may assist in the fulfilling of the duties of the Office shall be granted as stated in 63J-4a-302.

##### 12.4. Subpoena Power.

\_\_\_\_\_ (1) The Office shall have the power to issue a subpoena to obtain record or interview a person that the Office has the right to access as stated in 63J-4a-401.

**R367-1-13. Billing Codes.**

(1) In submitting claims to the Department, every provider shall use billing codes compliant with Health Insurance Portability and Accountability Act of 1996 (HIPAA), along with other national accredited coding standards as defined under the federal law or other nationally accepted coding standards and as established under the Affordable Care Act of 2010 which requires all Medicaid providers to bill according to National Correct Coding Initiatives (N.C.C.I) that are in effect at the time of submitting claims to the Medicaid Agency for payments.

**R367-1-14. Provider Communication.**

(1) In completing the work as outlined in 63J -4a-202(k), to identify and recoup overpayments, the Office will communicate overpayments information as follows:

(a) Any suspected recoupment or take back against future funds less than \$50,000 shall be communicated to the provider via email including a verification certificate attached to verify delivery.

(b) Any suspected recoupment or take back against future funds greater than \$50,000 shall be communicated to the provider through certified mail or similar guaranteed delivery mechanism.

(c) Administrative hearing notice requirements will also comply with (a) and (b) above.

(d) In addition to the methods set forth in this rule, a party may be served as permitted by the Utah Rules of Civil Procedure.

(2) Any request for records or documents will also comply with subsections (a) through (d).

**R367-1-15. Administrative Hearings.**

(1) Introduction and Authority:

(a) This rule sets forth the administrative hearing procedures for the Office.

(b) This rule is authorized by Section 26-1-24, Section 63G-4-102, 42 USC 1396a(a)(3), and 42 CFR 431, Subpart E.

(2) Definitions:

(a) "Action" means a reduction, denial or revocation of reimbursement for services for a provider or any other action by the Office that affects the legal rights of a person or group of persons, but not including rules made under the Utah Administrative Rulemaking Act, Title 63G, Chapter 3.

(b) "Administrative Law Judge" or ALJ means the person appointed to conduct an adjudicatory proceeding.

(c) "Ex Parte Communication" means direct or indirect communication in connection with an issue of fact or law between the ALJ and one party only.

(d) A "Medical Record" is a record that contains medical data of a client.

(e) "Order" means a ruling by an ALJ that determines the legal rights, duties, privileges, immunities, or other legal interests of one or more specific persons.

(f) "Petitioner" means any group or individual who is adversely affected by any action or inaction of the Office.

(3) Computation of time: Unless otherwise provided in a specific section of these rules, time shall be computed in accordance with the Utah Rules of Civil Procedure.

(4) Request for Hearing:

(a) Petitioner may file a written request for agency action pursuant to Section 63G-4-201, and in accordance with this rule. If a medical issue is in dispute, each request should include supporting medical documentation. The Office will schedule a hearing only when it receives sufficient medical records and may dismiss a request for agency action if it does not receive supporting medical documentation in a timely manner.

(b) Hearings must be requested within 30 calendar days from the date that the Office sends written notice of its intended action.

(c) Failure to submit a timely request for a hearing constitutes a waiver of a Petitioner's due process rights. The request must explain why the party is seeking agency relief, and the party must submit the request on the "Request for Hearing/Agency Action" form. The party must then mail or fax the form to the address or fax number contained on the notice of agency action.

(d) The Office considers a hearing request that a recipient sends via mail to be filed on the date of the postmark. If the postmark date is illegible, erroneous, or omitted, the Office considers the request to be filed on the date that the Office receives it, unless the sender can demonstrate through competent evidence that it was mailed before the date of receipt.

(5) Designation of Proceedings as Formal or Informal:

(a) A formal hearing will be set if the adverse action seeks reimbursement or other monetary sanctions in an amount of \$100,000 or above. Formal hearings will be conducted as formal adjudicative proceedings in accordance with the Utah Administrative Procedure Act, Utah Code 63G-4-202, 204 through 209, 302, 401, 403, 405, 501 and 502.

(b) An informal hearing will be set if the adverse action seeks reimbursement or other monetary sanctions in an amount less than \$100,000. Informal hearings will be conducted in accordance with the Utah Administrative Procedure Act, Utah Code 63G-4-202, 203, 209, 302, 401, 402, 405, 501, 502, 503, and 601.

(c) At any time before issuing a decision, the ALJ may convert an informal proceeding to a formal proceeding or a formal proceeding to an informal proceeding if conversion is in the public interest and does not unfairly prejudice the rights of any party.

(6) Service:

(a) The individual or party that files a document with the Office shall also serve the document upon all other named parties to the proceeding and file a proof of service with the Office that consists of a certificate, affidavit or acknowledgment of service.

(b) If the Office must provide notice of a formal hearing, the notice becomes effective on the date notification is sent.

(c) Section R367-1-14, Provider Communication, is incorporated under this sub-rule.

(7) Availability of Hearing:

(a) All requests for Hearings/Agency Action shall be set for an initial hearing in accordance with subsection 11.

(b) The Office will conduct an evidentiary hearing in connection with the agency action if the aggrieved person requests a hearing and there is a disputed issue of fact. If there is no disputed issue of fact, the ALJ may deny a request for an evidentiary hearing and issue a recommended decision without a hearing. There is no disputed issue of fact if the aggrieved person submits facts that do not conflict with the facts that the agency relies upon in taking action or seeking relief.

(c) The Office may deny or dismiss a request for a hearing if the aggrieved person:

- (i) withdraws the request in writing;
- (ii) verbally withdraws the hearing request at a prehearing conference;
- (iii) fails to appear or participate in a scheduled proceeding without good cause;
- (iv) prolongs the hearing process without good cause;
- (v) cannot be located or agency mail is returned without a forwarding address; or
- (vi) does not respond to any correspondence from the ALJ or fails to provide medical records that the agency requests.

(d) If the aggrieved person objects to the hearing denial, the person may raise that objection as grounds for relief in a request for reconsideration.

(8) Administrative Law Judge:

(a) The Inspector General shall appoint an impartial ALJ to conduct any hearing provided under these rules. Previous involvement in the initial determination of the action precludes an ALJ from appointment.

(b) The ALJ shall maintain order and may recess the hearing to regain order if a person engages in disrespectful, disorderly or disruptive conduct. The ALJ may remove any person, including a participant, from the hearing to maintain order. If a person shows persistent disregard for order and procedure, the ALJ may:

- (i) restrict the person's participation in the hearing;
- (ii) strike pleadings or evidence; or
- (iii) issue an order of default.

(9) Modifying Requirements of Rules:

(a) Except as provided in this paragraph, the requirements of these rules may be modified by order of the ALJ for good cause.

(b) The requirements for timely filing a Request for Hearing under section (4) may not be modified.

(10) Ex Parte Communications:

(a) Ex parte communications are prohibited.

(b) The ALJ may not listen to or accept any ex parte communication. If a party attempts ex parte communication, the ALJ shall inform the offeror that any communication that the ALJ receives off the record will become part of the record and furnished to all parties.

(c) Ex parte communications do not apply to communications on the status of the hearing and uncontested procedural matters.

(11) The Informal Hearing:

(a) Unless otherwise provided in this section, informal hearings shall be conducted in accordance with Utah Code Section 63G-4-202 and 203.

(b) As set forth in subsection (7) all request for hearings/agency action shall be set for initial hearing within 30 days, only after at least 10-day notice of all parties.

(c) The Office shall notify the petitioner and Office representative of the date, time and place of the hearing at least ten days in advance of the hearing. Continuances of scheduled hearings are not favored, but may be granted by the president officer for good cause shown. Failure by a petitioner to appear at the hearing after notice has been given shall be grounds for default and shall

waive both the right to contest the allegations and the right to the hearing.

(d) The party named in the notice of agency action and the Office shall be permitted to testify, present evidence, and comment on the issues. Formal rules of evidence shall not apply. The party that initiates the hearing process through a request for agency action has the burden of proof as the moving party. When a party possesses but fails to introduce certain evidence, the presiding officer may infer that the evidence does not support the party's position.

(e) Testimony may be taken under oath at the ALJ's discretion.

(f) All hearings are open to all parties.

(g) Discovery is prohibited; informal disclosures will be ruled on at the pre-hearing conference.

(h) Subpoenas and orders to secure the attendance of witnesses or the production of evidence shall be issued by the ALJ when requested by a petitioner or the Office, or may be issued by the ALJ on his/her own motion.

(i) A petitioner shall have access to relevant information contained in the Office's files and to material gathered in the investigation of petitioner to the extent permitted by law.

(j) The ALJ may cause an official record of the hearing to be made, at the Office's expense.

(k) Disposition of the ALJ's Order:

(i) Within a reasonable time after the close of the informal proceeding, the ALJ shall issue a signed order in writing that includes the following: the decision, the reasons for the decision, the Order, a notice of any right to administrative or judicial review of the order available to aggrieved parties and the time limits applicable to any reconsideration or review.

(ii) The order shall be based on the facts appearing in the Office's files and on the facts presented in evidence at the informal hearing.

(iii) A copy of the ALJ order shall be promptly mailed to each party.

(12) The Formal Hearing:

(a) The Office shall notify the parties of the date, time, and place of the hearing at least ten days in advance of the hearing. The ALJ's name, title, mailing address, and telephone number shall be provided to the parties. Failure to appear at the hearing after notice has been given shall be grounds for default and shall waive both the petitioner's right to contest the allegations, and the petitioner's right to the hearing.

(b) The ALJ shall regulate the course of the hearings to obtain full disclosure of relevant facts and to afford all the parties reasonable opportunity to present their positions, present evidence, argue, respond, conduct cross-examinations, and submit rebuttal evidence. The party that initiates the hearing process through a request for agency action has the burden of proof as the moving party. When a party possesses but fails to introduce certain evidence, the presiding officer may infer that the evidence does not support the party's position.

(c) Discovery

(i) the Utah Rules of Civil Procedure do not apply to formal adjudicative proceedings and formal discovery is permitted only as set forth in this section;

(ii) the scope of discovery in formal adjudicative proceedings, unless otherwise limited by order of the ALJ, is as follows:

(a) The Office may request copies of pertinent records. In the event the provider fails to produce the records within a reasonable time the Office may review all pertinent records in the custody of the provider during regular working hours after three days of written notice.

(b) The Office shall allow the aggrieved person or the person's representative to examine all Office documents and records upon written request to the Office at least 21 days before the hearing.

(c) An individual may request access to protected health information in accordance with Rule 380-250, which implements the privacy rule under the Health Insurance Portability and Accountability Act of 1996 (HIPAA).

(d) The ALJ may permit the filing of formal discovery or take depositions only upon a clear showing of necessity that takes into account the nature and scope of the dispute. If the ALJ allows formal discovery, he/she shall set appropriate time frames for response and assess sanctions for non-compliance.

(e) The ALJ may order a medical assessment at the expense of the Office to obtain information. This information is subject to HIPAA confidentiality requirements and is part of the hearing record.

(f) The ALJ may set appropriate deadlines and page limits for any motions.

(g) The ALJ may require the filing of stipulations of facts, or pre-trial briefs, or pretrial disclosures.

(h) The ALJ may permit the parties to make oral arguments or submit additional briefs or memoranda after the close of the evidence.

(i) The ALJ may require each party to submit a post-hearing brief, and proposed findings of fact and conclusions of law.

(j) ALJs order shall comply with 63G-4-208.

(13) Declaratory Orders.

(a) Any person may file a request for Office action, requesting that the Office issue a declaratory order determine the applicability of a statute, rule, or order within the primary jurisdiction of the Office in accordance with 63G-4-503.

(b) Petition Form.

The petition shall:

(i) be clearly designated as a request for a declaratory order;

(ii) identify the statute, rule, or order to be reviewed;

(iii) describe the situation or circumstances giving rise to the need for the declaratory order or in which applicability of the statute, rule, or order is to be reviewed;

(iv) describe the reason or need for the applicability review;

(v) identify the person or agency directly affected by the statute, rule, or order;

(vi) include an address and telephone where the petitioner can be reached during regular work days; and

(vii) be signed by the petitioner.

(c) The provisions of Sections 63G-4-202 through 63G-4-302 apply to declaratory proceedings.

(d) The Office will not issue a declaratory order that deals with a question or request that the ALJ determines is:

(i) Not within the jurisdiction and competence of the Office;

(ii) trivial, irrelevant, or immaterial;

(iii) not one that is ripe or appropriate for determination;

(iv) currently pending or will be determined in an on-going judicial proceeding;

(v) prohibited by state or federal law; or

(vi) challenge the validity of a federal statute or regulation.

#### **R367-1-16. General Rule Format.**

(1) The following format is used generally throughout the rules of the Office. Section headings as indicated and the following general definitions are for guidance only. The section headings are not part of the rule content itself. In certain instances, this format may not be appropriate and will not be implemented due to the nature of the subject matter of a specific rule.

(2) Introduction and Authority. A concise statement as to what Medicaid service is covered by the rule, and a listing of specific federal statutes and regulations and state statutes that authorize or require the rule.

(3) Definitions. Definitions that have special meaning to the particular rule.

(4) Other Sections. As necessary under the particular rule, additional sections may be indicated. Other sections include regulatory language that does not fit into sections (1) through (4).

**KEY: Inspector General, health, Medicaid fraud waste abuse**  
**Date of Enactment or Last Substantive Amendment: 2012**  
**Authorizing, Implemented, or Interpreted Law: 63J-4a-101; 63J-4a-201; 63J-4a-602**

## Health, Center for Health Data, Health Care Statistics **R428-2** Health Data Authority Standards for Health Data

### **NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE NO.: 35868

FILED: 02/10/2012

### **RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** Rule R428-2 changes are needed to reflect an update in office practice and to eliminate redundant text within the rule.

**SUMMARY OF THE RULE OR CHANGE:** Email has been added as a means of communication, when applicable,

between the Office and data supplier. Minor technical changes have been made, including the deletion of one sentence that contains text already found in the rule.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Title 26, Chapter 33a

ANTICIPATED COST OR SAVINGS TO:

- ◆ THE STATE BUDGET: The Utah Department of Health (UDOH) determines that these amendments will not create any cost or savings impact to the state budget or UDOH's budget, since the changes will not increase workload or resources and can be carried out with existing budget.
- ◆ LOCAL GOVERNMENTS: This rule does not affect local governments and has therefore no fiscal impact on them.
- ◆ SMALL BUSINESSES: Minor technical changes to the rule and allowing email as an acceptable method of communication between the office and supplier (which has been standard practice for many years), when applicable, will not create any cost or savings to small businesses.
- ◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: Minor technical changes to the rule and allowing email as an acceptable method of communication between the office and supplier (which has been standard practice for many years), when applicable, will not create any cost or savings to other persons.

COMPLIANCE COSTS FOR AFFECTED PERSONS: UDOH determines there are no compliance costs for affected persons. Procedural changes in this rule were adopted into practice several years ago.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: "Technical changes to these rules to conform them to current practice and to expressly allow data submission electronically is expected to benefit business."

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

HEALTH  
CENTER FOR HEALTH DATA,  
HEALTH CARE STATISTICS  
CANNON HEALTH BLDG  
288 N 1460 W  
SALT LAKE CITY, UT 84116-3231  
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

- ◆ Keely Cofrin Allen by phone at 801-538-6551, by FAX at 801-538-9916, or by Internet E-mail at [kcofrinallen@utah.gov](mailto:kcofrinallen@utah.gov)
- ◆ Mike Martin by phone at 801-538-9205, by FAX at 801-538-9916, or by Internet E-mail at [mikemartin@utah.gov](mailto:mikemartin@utah.gov)

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 04/02/2012

THIS RULE MAY BECOME EFFECTIVE ON: 04/09/2012

AUTHORIZED BY: David Patton, PhD, Executive Director

**R428. Health, Center for Health Data, Health Care Statistics.  
R428-2. Health Data Authority Standards for Health Data.  
R428-2-1. Legal Authority.**

This rule is promulgated under authority granted by Title 26, Chapter 33a.

**R428-2-2. Purpose.**

This rule establishes the reporting standards which apply to data suppliers, and the classification, control, use, and release of data received by the committee pursuant to Title 26, Chapter 33a.

**R428-2-3. Definitions.**

The following definitions apply to all of R428.

A. "Office" means the Office of Health Care Statistics within the Utah Department of Health, which serves as staff to the Utah Health Data Committee.

B. "Committee" means the Utah Health Data Committee created by Section 26-1-7.

C. "Data element" means the specific information collected and recorded for the purpose of health care and health service delivery. Data elements include information to identify the individual, ~~the~~ health care provider, ~~the~~ data supplier, ~~the~~ service provided, ~~the~~ charge for service, payer source, medical diagnosis, and medical treatment.

D. "Data release, disclosure, or disclose" means the disclosure or the communication of health care data to any individual or organization outside the committee, its staff, and contracting agencies.

E. "Data supplier" means a health care facility, health care provider, self-funded employer, third-party payer, health maintenance organization, or government department required to provide health data under rules adopted by the committee.

F. "Health Data Plan" means the plan developed and adopted by the Health Data Committee under Chapter 33a, Title 26, Section 104.

G. "Health care provider" means any person, partnership, association, corporation, or other facility or institution that renders or causes to be rendered health care or professional services as a physician, registered nurse, licensed practical nurse, nurse-midwife, dentist, dental hygienist, optometrist, clinical laboratory technologist, pharmacist, physical therapist, podiatrist, psychologist, chiropractic physician, naturopathic physician, osteopathic physician, osteopathic physician and surgeon, audiologist, speech pathologist, certified social worker, social service worker, social service aide, marriage and family counselor, or practitioner of obstetrics, and others rendering similar care and services relating to or arising out of the health needs of persons or groups of persons, and officers, employees, or agents of any of the above acting in the course and scope of their employment.

I. "Health data" means information relating to the health status of individuals, health services delivered, the availability of health manpower and facilities, and the use and costs of resources and services to the consumer.

H. "Identifiable health data" means any item, collection, or grouping of health data that makes the individual supplying or described in the health data identifiable.

J. "Individual" means a natural person.

K. "Order" means a committee action that determines the legal rights, duties, privileges, immunities, or other interests of one or more specific persons, but not a class of persons.

L. "Report" means a compilation, study or data release developed from resource documents to display information in a simplified manner and designed to meet the needs of specific audiences or nontechnical users.

M. "Resource document" means contemplated tabulation formats defined in the Health Data Plan to display information, documents, or records containing measures relating to health care. These documents are classified as standard, special, and electronic.

#### **R428-2-4. Technical Assistance.**

The Office may provide technical consultation to a data supplier upon request and resource availability. The consultation shall be to enable a data supplier to submit health data according to R428.

#### **R428-2-5. Data Classification and Access Requirements.**

A. The Utah Health Data Authority Act, Section 108, specifically classifies all data, information, reports, statements, memoranda, or other data received by the committee as "strictly confidential." [~~All data received under rules of the Utah Health Data Authority Act are strictly confidential.~~] This strict classification means the committee's data are not public, and as such are exempt from the Classification and Release Requirements specified in the Government Records Access And Management Act, Chapter 2, Title 63, Utah Code Annotated. The committee shall establish guidelines for the protection, use and release of the data.

B. Persons having access to data under control of the committee shall not:

1. take any action that might provide information to any unauthorized individual or agency;
2. scan, copy, remove, or review any information to which specific authorization has not been granted;
3. discuss information with unauthorized persons which could lead to identification of individuals;
4. give access to any information by sharing passwords or file access codes.

C. Any person having access to data under control of the committee shall:

1. maintain the data in a safe manner which restricts unauthorized access;
2. limit use of the data to the purposes for which access is authorized;
3. report immediately any unauthorized access.

D. A failure to report known violations by others of responsibilities specified in 3 and 4 above is subject to the same punishment as a personal violation.

E. The Office shall deny a person access to the facilities, services and data as a consequence of any violation of the responsibilities specified in R428-2-5(C) and R428-2-5(D) above.

F. The committee may, pursuant to Chapter 33a, Title 26, Section 110, subject the person to legal prosecution for any unauthorized use, disclosure, or publication of its data.

#### **R428-2-6. Security.**

The Office shall implement procedures protecting data confidentiality. These procedures shall [~~ensure~~secure] the committee's health data against unauthorized access.

#### **R428-2-7. Editing and Validation.**

A. The data supplier shall review each health data record prior to submission. The review shall consist of checks for accuracy, consistency, completeness, and conformity.

B. The Office may subject health data to edit checks. The Office may require the data supplier to correct health data failing an edit check. The data supplier may perform data validation before public disclosure.

1. The Office may, by first class U.S. mail or email, return to the submitting data supplier all health data failing an edit check. The submitting data supplier shall correct all returned health data and resubmit all corrected health data to the Office within 35 calendar days of the date the Office mails the records.

2. Data validation gives the data supplier the right to review, comment, and provide support for corrections of any information relating to its activities prior to public release. The data supplier shall return the validation document to the Office with comments and support for corrections within 35 calendar days of the date the Office mails the validation document. If the data supplier fails to return the information within the 35 day period, the committee may conclude that the information is correct and suitable for release.

3. The committee may note in its resource documents, reports, and publications that accurate appraisal of a certain category or entity cannot be presented because of a failure to comply with the committee's request for data, edit corrections, or data validation.

#### **R428-2-8. Error Rates.**

The committee may establish and order reporting quality standards based on non-reporting or edit failure rates.

#### **R428-2-9. Data Disclosure.**

A. The committee may release information, compilations, reports, statements, memoranda, or other data received or derived from its health data as specified in Chapter 33a, Title 26, Sections 107, 108, and 109. The Office may disclose the submitted data as resource documents or reports in either standard, special, or electronic format. The Office may prepare data for disclosure annually as standard or special resource documents specified in the health data plan. If the disclosure identifies a health care provider, the Office must adhere to the procedures specified in R428-2-9(B).

B. Prior to any release of a compilation, report, or resource document in which a health care provider is identified, the Office shall notify the data supplier and the health care provider by first class mail or email using the last known address. The data supplier and health care provider have the right to:

1. review the information to be disclosed and verify the accuracy of the information contained therein;
2. submit to the Office evidence of errors in the disclosure document;
3. develop written comments or alternate interpretations to the information reported for inclusion with the disclosure;

4. return the disclosure notice, evidence of errors, and comments within 35 calendar days of the date the Office mails the notice. The committee may interpret the failure to return the notice of disclosure within the designated time period as agreement that the reports are acceptable for release in any format outlined in the Health Data Plan.

5. the Office shall correct data it finds to be in error and provide data suppliers and health care providers notification of the corrections subject to the rights specified in R428-2-9(B).

C. The committee may allow exemptions to the notification procedures specified in R428-2-9(B):

1. The Office may release to the data supplier its data elements used to create compilations, reports, or resource documents without notification when a data supplier requests the data it supplied.

2. The Office may make additional disclosures to other requesters of compilations, reports, or resource documents previously reviewed under the procedures specified in R428-2-9(B).

D. The Office may, by its initiative, prepare and disclose special compilations, reports, studies or analyses relating to health care cost, quality, access, health promotion programs, or public health. These actions may be to meet legislative intent or upon request from individuals, government agencies, or private organizations.

E. The committee may make data available for disclosure in computer readable formats.

1. The public data set provides general health care data. The Director of the Office may approve written requests for the public data set without approval of the committee. Written requests must include the following:

- a. the name, address, and telephone number of the requester;
- b. a statement of the purpose for which the data will be used; and
- c. the starting and ending dates for which data are requested.

2. The design of the research oriented data set is for bona fide research of health care cost, quality, access, health promotion programs, or public health issues. A research oriented data set is available by request to the committee. Requests for a research oriented data set must be accompanied by a completed request form as established by the committee. Request forms are included in Technical Manuals that are available from the Office. The committee requires documentation of the requester's:

- a. need for the research oriented data set to conduct bona fide research;
- b. intent to use the data to study, promote, or improve accessibility, quality, or cost-effective health care;
- c. integrity and ability to safeguard the data from any breach of confidentiality;
- d. competency to effectively use the data in the manner proposed;
- e. affiliation with an institutional review board; and
- f. guarantee that no further disclosure will occur without prior approval of the Office.

**R428-2-10. Penalties.**

Pursuant to Section 26-23-6, any person that violates any provision of this rule may be assessed an administrative civil money

penalty not to exceed \$3,000 upon an administrative finding of a first violation and up to \$5,000 for a subsequent similar violation within two years. A person may also be subject to penalties imposed by a civil or criminal court, which may not exceed \$5,000 or a class B misdemeanor for the first violation and a class A misdemeanor for any subsequent similar violation within two years.

**KEY: health, health policy, health planning**  
**Date of Enactment or Last Substantive Amendment:** [~~August 14, 2002~~2012  
**Notice of Continuation:** November 30, 2011  
**Authorizing, and Implemented or Interpreted Law:** 26-33a-104

**Health, Center for Health Data, Health  
 Care Statistics  
 R428-5  
 Appeal and Adjudicative Proceedings**

**NOTICE OF PROPOSED RULE  
 (Amendment)  
 DAR FILE NO.: 35869  
 FILED: 02/10/2012**

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** Sections for Legal Authority and Purpose have been added to the rule. Electronic communications are permissible between the Committee and respondents/representatives involved in committee proceedings. Several references to statutes have been updated for accuracy purposes.

**SUMMARY OF THE RULE OR CHANGE:** New rule sections and corrections provide more clarity to Rule R428-5. Email as an acceptable method of contact reflects current business practice.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Title 26, Chapter 33a

**ANTICIPATED COST OR SAVINGS TO:**  
 ♦ **THE STATE BUDGET:** These changes are administrative and will not directly impact state budgets.  
 ♦ **LOCAL GOVERNMENTS:** This rule does not affect local governments and therefore has no fiscal impact on them.  
 ♦ **SMALL BUSINESSES:** These rule amendments impose no new costs, fees, or requirements on small businesses. Therefore, no fiscal impact to small businesses is anticipated.  
 ♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** These rule amendments impose no new costs, fees or requirements on businesses, individuals, local governments, or persons that are not small businesses. Therefore, no fiscal impact to these groups is anticipated.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** There are no compliance costs for persons affected by these changes to Rule R428-5. Although there are many modifications within this amendment, they simply reflect current practice.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** "Technical changes to these rules to conform them to current practice and to expressly allow data submission electronically is expected to benefit business."

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

HEALTH  
CENTER FOR HEALTH DATA,  
HEALTH CARE STATISTICS  
CANNON HEALTH BLDG  
288 N 1460 W  
SALT LAKE CITY, UT 84116-3231  
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Keely Cofrin Allen by phone at 801-538-6551, by FAX at 801-538-9916, or by Internet E-mail at [kcofrinallen@utah.gov](mailto:kcofrinallen@utah.gov)  
♦ Mike Martin by phone at 801-538-9205, by FAX at 801-538-9916, or by Internet E-mail at [mikemartin@utah.gov](mailto:mikemartin@utah.gov)

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 04/02/2012

THIS RULE MAY BECOME EFFECTIVE ON: 04/09/2012

AUTHORIZED BY: David Patton, PhD, Executive Director

**R428. Health, Center for Health Data, Health Care Statistics.**

**R428-5. Appeal and Adjudicative Proceedings.**

**R428-5-1. Legal Authority.**

The Utah Health Data Committee is given rulemaking authority pursuant to Utah Code Annotated Title 26, Chapter 33a.

**R428-5-2. Purpose.**

The purpose of this rule is to establish procedures used by the Utah Health Data Committee for its adjudicative proceedings.

**R428-5-[1]3. Type of Proceeding.**

A. The actions of the committee and requests for committee action are designated as formal adjudicative proceedings. The committee may at any time before a final order is issued in any adjudicative proceeding convert a formal adjudicative proceeding to an informal adjudicative proceeding, or an informal adjudicative proceeding to a formal adjudicative proceeding if:

1. conversion of the proceeding is in the public interest;
2. conversion of the proceeding does not unfairly prejudice the rights of any party.

**R428-5-[2]4. Formal Proceedings.**

A. The committee or its designated representative shall preside over a formal proceeding initiated by a notice of committee action or in response to a request for committee action.

B. The content of the notice of committee action shall comply with Section 63G-4[6b]-[3]201(2). Formal hearings shall be held at the next regularly scheduled committee meeting unless prior arrangements are made for an alternate date and proper notice is provided all parties.

C. Within 30 calendar days of the mailing (electronic or paper) date of a notice of committee action, the respondent or his representative shall file with the Bureau and with each person known to have a direct interest a written, signed response that includes:

1. the agency's file number or other reference number;
2. the name of the adjudicative proceeding;
3. a statement of the relief or action sought;
4. a statement of the facts;
5. a statement summarizing the reasons for granting the relief requested.

D. A conference may be scheduled by the Director of the Bureau or the presiding officer to encourage settlement before the hearing.

E. The committee or its designated representative as presiding officer shall have the authority to issue subpoenas at their discretion.

F. Within a reasonable time after the hearing, or after the filing of any post-hearing papers permitted by the presiding officer, the presiding officer shall sign and issue an order that includes:

1. a statement of the presiding officer's findings of fact;
2. a statement of the presiding officer's conclusions of law;
3. a statement of the reasons for the presiding officer's decision;
4. a statement of any relief ordered by the agency;
5. a notice of the right to apply for committee reconsideration;
6. a notice of any right to administrative or judicial review available;
7. the time limits applicable to any reconsideration or review.

**R428-5-[3]5. Default and Reconsideration.**

A. The presiding officer may enter an order of default against a party if:

1. a party in an informal adjudicative proceeding fails to participate in the adjudicative proceedings;
2. a party to a formal adjudicative proceeding fails to attend or participate in a properly scheduled hearing after receiving proper notice; or
3. a respondent in a formal adjudicative proceeding fails to file a response within the time frame specified in R428-[5]4-[1]([3]C).
4. The order of default shall include a statement of the grounds for default and shall be mailed (electronic or paper) to all parties.

5. A defaulted party may seek to have the committee set aside the default order and any order in the adjudicative proceeding issued subsequent to the default order, by following the procedures

outlined in the Utah Rules of Civil Procedure. A motion to set aside a default and any subsequent order shall be made to the presiding officer.

6. In an adjudicative proceeding begun by the agency, or in an adjudicative proceeding that has other parties besides the party in default, the presiding officer shall, after issuing the order of default, conduct any further proceedings necessary to complete the adjudicative proceeding without the participation of the party in default and shall determine all issues in the adjudicative proceeding, including those affecting the defaulting party.

7. In an adjudicative proceeding that has no parties other than the committee and the party in default, the presiding officer shall, after issuing the order of default, dismiss the proceeding.

B. Any party may file a written request for reconsideration with the committee stating the specific grounds upon which relief is requested. The request must be filed within 20 days after:

1. the date that an Order of Review is issued in an informal adjudicative proceeding; or
  2. the date that a request for review is denied; or
  3. the date that a final order is issued in a formal adjudicative proceeding.
4. The request for reconsideration shall be filed with the committee and one copy shall be sent by mail (electronic or paper) to each party by the person making the request.
5. The committee may issue a written order granting or denying the request within 30 working days of filing of the request.
6. If the committee does not issue an order granting or denying the request within 30 working days after the request is filed, the request for reconsideration shall be considered denied.

#### **R428-5-[4]6. Judicial Review.**

An aggrieved party may obtain judicial review of final committee action upon exhaustion of all available administrative remedies. The aggrieved party shall file a petition for judicial review of final agency action within 30 calendar days after the final committee action is issued or is considered to have been issued under R428-5-[4]6.

#### **R428-5-[5]7. Declaratory Orders.**

A. Any person or agency may petition for a committee declaratory ruling of rights, status, or other legal relations under a specific statute or rule by submitting a written petition. The petition shall contain the following information:

1. the specific statute or rule to be reviewed;
2. the situation or circumstances in which applicability is to be reviewed;
3. the reason or need for the applicability review;
4. the name, address, and telephone number where the petitioner can be contacted;
5. the date of submission and signature of the petitioner.

B. The committee or its authorized representative shall review and consider the petition and may issue a declaratory ruling setting forth:

1. the applicability or non-applicability of the specific statute or rule;
2. the reasons for the applicability or non-applicability of the specific statute or rule;

3. any requirements imposed on the agency, petitioner, or any other person as a result of the ruling.

C. The committee may as appropriate:

1. interview the petitioner;
2. consult with counsel or the Attorney General;
3. take any action the committee in its judgment deems necessary to provide that the petition receives adequate review and due consideration.

D. If the committee has not issued a declaratory order within 60 days after receipt of the petition, the petition is denied.

E. The committee will not issue a declaratory order concerning any action which could result in the Department imposing sanctions.

#### **R428-5-[6]8. Informal Proceedings.**

A. The committee may convert a formal proceeding to informal as specified under R428-[5]3. The Chairman of the committee or his designated representative shall act as presiding officer in an informal proceeding. No response or other pleading is required subsequent to the receipt of a notice of agency decision unless specifically requested and a hearing is not required to be held.

B. The presiding officer may schedule a conference to encourage settlement before issuing a decision.

C. Before issuing a final order in an informal proceeding, the presiding officer may convert the proceeding to a formal proceeding if such action is deemed to be in the public interest and does not unfairly prejudice the rights of any party.

D. Unless a time frame is specified elsewhere in this chapter, the presiding officer shall, within a reasonable time of receipt of a request for agency action, issue a signed order in writing stating:

1. the decision;
2. the reasons for the decision;
3. notice of the right to any administrative or judicial review available;
4. the time limits for requesting review.

E. 1. Within 30 calendar days of the issuance of an order by the presiding officer, a party aggrieved by the decision may seek review of that order by filing a written request for review by the full committee. The request shall:

- a. be signed by the party requesting review;
- b. state the grounds for review and the relief requested;
- c. be dated the date of mailing; and
- d. be sent by mail (electronic or paper) to the presiding officer and to each party of the proceeding.

2. Within 15 calendar days of the mailing (electronic or paper) of the request for review, any party may file a response with the committee. A copy of the response must also be mailed (electronic or paper) to the presiding officer and each of the parties.

3. The committee may issue a notice granting or denying the request for review within 30 working days of filing of the request. If the committee does not issue a notice granting or denying the request within the 30 day period the request for review shall be considered denied.

4. If a review of the order is granted, the notice shall specify the date a hearing shall be conducted before the full committee.

5. Within a reasonable time from the completion of the hearing, the committee shall issue a written order on review which shall contain:

- a. a designation of the statute or rule permitting or requiring review;
- b. a statement of the issues reviewed;
- c. findings of fact as to each of the issues reviewed;
- d. conclusions of law as to each of the issues reviewed;
- e. the reasons for the disposition;
- f. whether the decision of the presiding officer or agency is to be affirmed, reversed, or modified, and whether all or any portion of the adjudicative proceeding is to be remanded;
- g. a notice of any right of further administrative reconsideration or judicial review available; and
- h. the time limit applicable to any review.

**KEY: health, health policy, health planning**

**Date of Enactment or Last Substantive Amendment:**  
[1994]2012

**Notice of Continuation: November 30, 2011**

**Authorizing, and Implemented or Interpreted Law: 26-33a-104**

## Health, Center for Health Data, Health Care Statistics

### R428-10

## Health Data Authority Hospital Inpatient Reporting Rule

### NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 35870

FILED: 02/10/2012

### RULE ANALYSIS

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** Revises the list of data elements reported to meet current industry standards of uniform billing including UB-04, ASC X12N and HIPAA version 5010 transactions. These additions include the national provider identifier (NPI), present on admission, do not resuscitate, additional diagnosis and procedure codes and e-codes. Other improvements include additional physician IDs and specialty information and requiring the patient's complete address and name. Updates the submittal media accepted by replacing the outdated terms computer diskette and magnetic tape with compact disc and DVD. Also expands the acceptable methods of submittal to include secure electronic uploads or secure emails. Also explicitly delineates the full list of hospital types that are required to report.

**SUMMARY OF THE RULE OR CHANGE:** Expansion of hospital inpatient reporting to current uniform billing standards. This will coordinate our reportable data elements

to match improvements the hospitals are currently making to their systems to meet the federal HIPAA version 5010 transaction standard and the upcoming transition to ICD-10 in the billing industry. Receiving data submittals through an electronic interchange network such as UHIN or accepting secure uploads or secure email reflects current business practice.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Title 26, Chapter 33a

**ANTICIPATED COST OR SAVINGS TO:**

◆ **THE STATE BUDGET:** Initial costs to the state would include the revision of technical specifications and rules, and the establishment of adequate processes to edit, test, and verify data quality. This will be absorbed within the existing budget by reallocating staff resources.

◆ **LOCAL GOVERNMENTS:** This rule does not affect local governments and has no fiscal impact on them.

◆ **SMALL BUSINESSES:** Moving to an electronic transaction will save small hospitals' personnel time and resources on printing and mailing. The data improvements and electronic data submission will reduce UDOH data processing time and improve the timeliness of data release, and benefit data users and the public.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** Moving to an electronic transaction will save hospitals' personnel time and resources on printing and mailing. The data improvements and electronic data submission will reduce UDOH data processing time and improve the timeliness of data release, and benefit data users and the public.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** The initial cost to set up the revised reporting capacity will occur to the individual hospital or hospital systems. Since the reporting requirement is consistent with the industry standard (billing data), the anticipated reporting cost would not add significant burden to a reporting facility. Hospitals in Utah already use electronic data interchange technology for total or partial submission of claims.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** "Updating this rule to standardize reporting is expected to reduce the regulatory burden on business and reduce cost."

**THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:**

HEALTH  
CENTER FOR HEALTH DATA,  
HEALTH CARE STATISTICS  
CANNON HEALTH BLDG  
288 N 1460 W  
SALT LAKE CITY, UT 84116-3231  
or at the Division of Administrative Rules.

**DIRECT QUESTIONS REGARDING THIS RULE TO:**

◆ Keely Cofrin Allen by phone at 801-538-6551, by FAX at 801-538-9916, or by Internet E-mail at kcofrinallen@utah.gov  
 ◆ Mike Martin by phone at 801-538-9205, by FAX at 801-538-9916, or by Internet E-mail at mikemartin@utah.gov  
**INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 04/02/2012**

THIS RULE MAY BECOME EFFECTIVE ON: 04/09/2012

AUTHORIZED BY: David Patton, PhD, Executive Director

**R428. Health, Center for Health Data, Health Care Statistics.  
 R428-10. Health Data Authority Hospital Inpatient Reporting Rule.**

**R428-10-1. Legal Authority.**

This rule is promulgated under authority granted by Title 26, Chapter 33a, and in accordance with the Health Data Plan.

**R428-10-2. Purpose.**

This rule establishes the reporting standards for inpatient discharge data by licensed hospitals. Inpatient discharge data are needed to develop and maintain a statewide hospital inpatient discharge data base.

**R428-10-3. Definitions.**

These definitions apply to rule R428-10.

- (1) "Office" as defined in R428-2-3(A).
- (2) "Discharge data" means the consolidation of complete billing, medical, and personal information describing a patient, the services received, and charges billed for a single inpatient hospital stay into a discharge data record.
- (3) "Hospital" means a facility that is licensed under R432-100.
- (4) "Level 1 data element" means a required reportable data element.
- (5) "Level 2 data element" means a data element that is reported when the information is available from the patient's hospital record.
- (6) "Patient Social Security number" is the social security number of the patient receiving inpatient care.
- (7) "Record linkage number" is an irreversible, unique, encrypted number that will replace patient social security number. The Office assigns the number to serve as a control number for data analysis.
- (8) "Uniform billing form" means the uniform billing form recommended for use by the National Uniform Billing Committee.

**R428-10-4. Source of Inpatient Hospital Discharge Data Reporting.**

The reporting source for hospital inpatient discharge data is Utah licensed hospitals.

- (1) A hospital facility, either general acute care, critical access, children's, long term, psychiatric or rehabilitation ~~specialty~~ hospital, shall report discharge data records for each inpatient discharged from its facility.

(2) A hospital may designate an intermediary, such as the Utah Hospital Association, or may submit discharge data directly to the committee.

(3) Each hospital is responsible for compliance with these rules. Use of a designated intermediary does not relieve the hospital of its reporting responsibility.

(4) Each hospital shall designate a department within the hospital and a person responsible for submitting the discharge data records. This person shall also be responsible for communicating with the Office.

**R428-10-5. Data Submittal Schedule.**

Each hospital shall submit to the Office a single discharge data record for each patient discharged according to the schedule shown in Table 1, Hospital Discharge Data Submittal Schedule, or a schedule mutually agreed upon by the Office and hospital. For a patient with multiple discharges, each hospital shall submit a single discharge data record for each discharge. For a patient with multiple billing claims each hospital shall consolidate the multiple billings into a single discharge data record for submission after the patient's discharge.

TABLE 1  
 HOSPITAL DISCHARGE DATA SUBMITTAL SCHEDULE

PATIENT'S DATE OF DISCHARGE IS BETWEEN	DISCHARGE DATA RECORD IS DUE BY
January 1 through March 31	May 15
April 1 through June 30	August 15
July 1 through September 30	November 15
October 1 through December 31	February 15

**R428-10-6. Data Element Reporting.**

Tables 2 and 3 display the reportable data elements by defined level. A hospital shall, as a minimum, report the required level 1 data elements shown in Table 2. Each hospital shall report level 2 data elements shown in Table 3 whenever the information is a part of the hospital's patient record. ~~[Beginning July 1, 1993, each patient social security number shall be reported as a level 2 (as available) data element.]~~ Beginning January 1, 1995, each hospital shall collect patient social security number as a level 1 (required) data element on the hospital discharge record, and report the patient social security number with the complete discharge record according to the submittal schedule. The Department shall adopt an encryption method to mask patient identity and replace patient social security number with a record linkage number as the control number. The Department may not retain the original record containing patient social security number and shall destroy the original record containing patient social security number after the Department assures the validity of the patient record. The Department of Health may conduct on-site audits to verify the accuracy of all submittals.

Each hospital shall submit the reported data elements on compact disc, DVD, [computer diskette, magnetic tape,] or send electronically ~~[as an "electronic copy" of encounter or claim data,]~~ through the Utah Health Information Network or another compatible electronic data interchange network or other secure upload or secure email method. The Office shall accept data that complies with data standards established in R590-164, Uniform Health Billing Rule. The Office shall provide to each hospital, a Hospital Inpatient Discharge Data Submittal Technical Manual

which outlines the specifications, format, and types of data to report. The revised Submittal Technical Manual is effective for discharges occurring on or after January 1, 2012[+995].

TABLE 2  
REQUIRED LEVEL 1  
HOSPITAL INPATIENT DISCHARGE DATA ELEMENTS

CATEGORY	NAME
Provider	
1.	Provider identifier ( <u>hospital name</u> )
Patient	
2.	Patient control number
3.	Patient's medical <u>record[chart]</u> number
4.	Patient Social Security Number
5.	Patient name
6[5].	Patient's [ <u>postal zip code for</u> ]-address, city, state, zip
7[6].	Patient's date of birth
8[7].	Patient's gender
Service	
9[8].	Admission date
10[9].	Type of admission/visit
11[0].	Point of origin for admission or visit[ <u>Source of admission</u> ]
12[1].	Patient's <u>discharge status</u>
13[2].	Statement covers period
14.	Condition codes (do not resuscitate, homeless, others)
Charge	
15.	Service line
16[3].	Revenue codes
17.	HCPSC Procedure codes including modifiers
18.	Unit or basis for measurement code
19[4].	Service [ <u>U</u> ]units/days[ <u>-of service</u> ]
20[15].	Total charges by revenue code
Payer	
21[6].	Payer's identification
22[17].	Patient's relationship to insured
Diagnosis and Treatment	
23.	Diagnosis version qualifier
24[18].	Principal diagnosis <u>with present on admission</u>
25[19].	Other diagnosis codes <u>with present on admission</u>
26.	Admitting diagnosis code
27.	Patient's reason for visit codes
28[0].	External cause of injury codes (E-code) <u>with present on admission</u>
29[1].	Principal ICD procedure code
30[22].	Other ICD procedure codes
31[23].	Date of principal procedure[ <u>Procedure coding method, required if coding is not ICD-9</u> ]
Physician	
32[4].	Attending provider primary[ <u>-physician</u> ] ID
33.	Operating physician primary ID
34.	Other operating physician primary ID
35[25].	Rendering physician primary ID[ <u>other-physicians' IDs</u> ]
36.	Referring provider primary ID
Other	
37[26].	Type of bill

TABLE 3  
WHEN DATA ELEMENT IS AVAILABLE FROM THE  
HOSPITAL'S PATIENT RECORD  
LEVEL 2  
HOSPITAL INPATIENT DISCHARGE DATA ELEMENTS

CATEGORY	NAME
Patient	
1.	Patient marital status
2.	Patient race and ethnicity
[Payer]	

[2.]	Insured group name]
Employer	
[3.]	Employment status code]
3[4].	Employer name
[5.]	Employer location]
Charge	
4[6].	Prior payments
[7.]	Patient Race and Ethnicity]
5[8].	Estimated amount due
Payer	
6.	Insured names
7[9].	Certificate/Social Security Number/Health Insurance Claim/Identification Number
8.	Insured group names
Physician	
9.	Attending provider secondary ID
10.	Attending provider specialty information
11.	Operating physician secondary ID
12.	Operating physician specialty information
13.	Other operating physician secondary ID
14.	Other operating physicc. specialty information
15.	Rendering physician secondary ID
16.	Rendering physician specialty information
17.	Referring provider secondary ID
18.	Referring provider specialty information
19[0].	Resident ID
20[11].	Resident ID Type

**R428-10-7. Exemptions, Extensions, and Waivers.**

(1) Hospitals may submit requests for exemptions or waivers to the committee within 60 calendar days of the due date as listed in the hospital discharge data submittal schedule in R428-10-5, Table 1. Exemptions or waivers to the requirements of this rule may be granted for a maximum of one calendar year. A hospital wishing an exemption or waiver for more than one year must submit a request annually.

(2) Requests for extensions must be submitted to the Office at least ten working days prior to the due date as listed in the hospital discharge data submittal schedule. Extensions to the submittal schedule may be granted for a maximum of 30 calendar days. The hospital must separately request each additional 30 calendar day extension.

(3) The committee may grant exemptions or waivers when the hospital demonstrates that compliance imposes an unreasonable cost to the hospital. The Office may grant extensions when the hospital documents that technical or unforeseen difficulties prevent compliance. A petitioner requesting an exemption, extension, or waiver shall make the request in writing. A request for exemption, extension, or waiver must contain the following information:

- (a) the petitioner's name, mailing address, telephone number, and contact person;
- (b) the date the exemption, extension, or waiver is to start and end;
- (c) a description of the relief sought, including reference to the specific sections of the rule;
- (d) a statement of facts, reasons, or legal authority in support of the request; and
- (e) a proposed alternative to the requirement.

(4) A form for exemption, extension, or waiver can be found in the technical manual available from the Office. Exemptions, extensions, or waivers may be granted for the following:

(a) Hospital exemption: All hospitals are subject to the reporting requirements. Reasons justifying an exemption might be a circumstance where the hospital makes no effort to charge any patient for service.

(b) Discharge data consolidation exemption: This exemption allows variation in the data consolidation requirement, such as allowing the hospital to submit multiple records containing the reportable data elements rather than a single consolidated discharge data record.

(c) Reportable data element exemption: Each request for a data element exemption must be made separately.

(d) Submission media exemption: This exemption allows variation in the submission media, such as uploading using secure sftp[a paper copy of the uniform billing form].

(e) Submittal schedule extension: The request must specifically document the technical or unforeseen difficulties that prevent compliance.

(f) Submission format waiver: This waiver allows variation in the submission format. Each request must state an alternative transfer electronic media, its format, and the record layout for the discharge data records. Granting of this waiver is dependent on the Office's ability to process the submittal media and format with available computer resources.

**R428-10-8. Penalties.**

Pursuant to Section 26-23-6, any person that violates any provision of this rule may be assessed an administrative civil money penalty not to exceed \$3,000 upon an administrative finding of a first violation and up to \$5,000 for a subsequent similar violation within two years. A person may also be subject to penalties imposed by a civil or criminal court, which may not exceed \$5,000 or a class B misdemeanor for the first violation and a class A misdemeanor for any subsequent similar violation within two years.

**KEY: health, hospital policy, health planning**

**Date of Enactment or Last Substantive Amendment: [February 27, 2004]2012**

**Notice of Continuation: November 30, 2011**

**Authorizing, and Implemented or Interpreted Law: 26-33a-104; 26-33a-108**

**Labor Commission, Antidiscrimination  
and Labor, Labor  
R610-3-21  
Uniforms**

**NOTICE OF PROPOSED RULE  
(Amendment)**

**DAR FILE NO.: 35833  
FILED: 02/03/2012**

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** In conjunction with its oversight authority over payment of wages, the Commission previously promulgated

Section R610-3-21, which generally requires employers to bear the cost of employee work uniforms. However, based on a recent review of its statutory authority, the Commission has concluded that it does not have clear authority to impose such a requirement on employers. The Commission therefore proposes to remove the section. However, in some specific situations, other federal and state health and safety regulations may continue to require employers to bear the cost of personal protective equipment such as fire-resistant clothing, safety boots, and face shields when these are necessary because of workplace hazards. See Labor Commission Section R614-1-4, adopting federal rules found in 29 CFR 1910-132. Likewise, Labor Commission Section R610-3-18 remains in effect and prohibits employers from deducting the cost of uniforms from an employee's wages without the employee's consent.

**SUMMARY OF THE RULE OR CHANGE:** Section R610-3-21 will be removed from the rule.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 34-23-101 et seq. and Section 34-28-1 et seq. and Section 34-40-101 et seq. and Section 63G-4-102 et seq.

**ANTICIPATED COST OR SAVINGS TO:**

♦ **THE STATE BUDGET:** With the removal of Section R610-3-21, the Labor Commission's Antidiscrimination and Labor Division will no longer receive complaints or adjudicate disputes regarding employer liability for uniform costs. This will result in some cost savings, but the number of such cases is minimal and the savings to the Division will not be significant.

♦ **LOCAL GOVERNMENTS:** In their capacity as employers, local governments will no longer be required to pay for employee uniforms, but may choose to do so. As already noted, local governments will remain obligated to provide necessary personal protective equipment, and may not deduct the cost of uniforms from an employee's pay without the employee's consent.

♦ **SMALL BUSINESSES:** Employers, including small businesses, will no longer be required to pay for employee uniforms, but may choose to do so. As already noted, small businesses and other employers will remain obligated to provide necessary personal protective equipment, and may not deduct the cost of uniforms from an employee's pay without the employee's consent.

♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** Individual employees may incur additional costs for uniforms that were previously paid by their employers. These costs will vary from business to business and from employee to employee and in most cases will be relatively minor.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** Removal of Section R610-3-21 does not impose any compliance costs on affected persons.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: For some businesses, the elimination of Section R610-3-21 general requirement that employers pay for employee uniforms will result in a modest reduction of expense. To that extent, the sections removal will have a positive fiscal impact on businesses.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

LABOR COMMISSION  
ANTIDISCRIMINATION AND LABOR, LABOR  
HEBER M WELLS BLDG  
160 E 300 S  
SALT LAKE CITY, UT 84111-2316  
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Heather Gunnarson by phone at 801-530-6921, by FAX at 801-530-7601, or by Internet E-mail at hgunnarson@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 04/02/2012

THIS RULE MAY BECOME EFFECTIVE ON: 04/09/2012

AUTHORIZED BY: Sherrie Hayashi, Commissioner

**R610. Labor Commission, Antidiscrimination and Labor, Labor.**

**R610-3. Filing, Investigation, and Resolution of Wage Claims.**

**~~R610-3-21. Uniforms.~~**

~~A. Where the wearing of uniforms is a condition of employment, the employer shall furnish the uniforms free of charge.~~

~~1. The term "uniform" includes any article of clothing, footwear, or accessory of a distinctive design or color required by an employer to be worn by employees.~~

~~2. An article of clothing which is associated with a specific employer by virtue of an emblem (logo) or distinctive color scheme shall be considered a uniform.~~

~~B. The employer may request an amount, not to exceed the actual cost of the uniform or \$20, whichever is less, as a deposit on each uniform required by the employer. The deposit shall be refunded to the employee at the time uniform is returned.~~

**]KEY: wages, minors, labor, time**

**Date of Enactment or Last Substantive Amendment: ~~March 24, 2010~~ 2012**

**Notice of Continuation: October 5, 2011**

**Authorizing, and Implemented or Interpreted Law: 34-23-101 et seq.; 34-28-1 et seq.; 34-40-101 et seq.; 63G-4-102 et seq.**

**Public Lands Policy Coordinating  
Office, Administration  
R694-1  
Archeological Permits**

**NOTICE OF PROPOSED RULE**

(New Rule)

DAR FILE NO.: 35874

FILED: 02/14/2012

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** This new rule reinstates the previous version that was allowed to expire.

**SUMMARY OF THE RULE OR CHANGE:** This rule authorizes the procedure for the granting of archaeological and historical permits.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 9-8-305

**ANTICIPATED COST OR SAVINGS TO:**

◆ **THE STATE BUDGET:** Because this rule replaces the expired rule word-for-word, there is no difference in costs over the original.

◆ **LOCAL GOVERNMENTS:** Because this rule replaces the expired rule word-for-word, there is no difference in costs over the original.

◆ **SMALL BUSINESSES:** Because this rule replaces the expired rule word-for-word, there is no difference in costs over the original.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** Because this rule replaces the expired rule word-for-word, there is no difference in costs over the original.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** Because this rule replaces the expired rule word-for-word, there is no difference in costs over the original.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Because this rule replaces the expired rule word-for-word, there is no difference in costs over the original.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

PUBLIC LANDS POLICY COORDINATING OFFICE  
ADMINISTRATION  
ROOM 5110 STATE OFFICE BUILDING  
SALT LAKE CITY, UT 84114  
or at the Division of Administrative Rules.

**DIRECT QUESTIONS REGARDING THIS RULE TO:**

♦ John Harja by phone at 801-537-9275, by FAX at 801-537-9226, or by Internet E-mail at johnharja@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 04/02/2012

THIS RULE MAY BECOME EFFECTIVE ON: 04/09/2012

AUTHORIZED BY: John Harja, Assistant Director for Planning and Policy

**R694. Public Lands Policy Coordination Office, Administration.**

**R694-1. Archeological Permits.**

**R694-1-1. Authority.**

These rules are authorized by Subsection 9-8-305(5).

**R694-1-2. Purpose.**

The purpose of these rules is to establish requirements for the issuance of survey and excavation permits for all lands in the State of Utah, and to insure compliance with permit provisions and the underlying rules and law.

**R694-1-3. Definitions.**

(a) Terms used in this rule are defined in Section 9-8-302.

(b) In addition:

(i) "Full-time professional experience" means work within a position requiring responsibility for progress and completion of a project involving archeological resources.

**R694-1-4. Qualifications of Permit Holders.**

(a) Permits will be issued to those individuals who qualify as a principal investigator, except for those who may otherwise qualify but who have had a permit suspended or revoked pursuant to Section R694-1-11.

(b) As authorized by Subsection 9-8-305(2)(b), in lieu of a graduate degree in anthropology, archeology or history, a person requesting a permit may submit evidence demonstrating the ability to design and execute a research project in anthropology, archeology or history, including the collection and analysis of information, presentation of results in an approved and reviewed format, and the subsequent curation of specimens.

(c)(i) As authorized by Subsection 9-8-305(2)(iii), applicants for a permit may submit evidence of training related to proper methodologies for field procedures, laboratory analysis and reporting within projects involving archeological resources.

(ii) An applicant for a permit wishing to submit evidence pursuant to Subsection R694-1-4(c)(i) must demonstrate that the training was of a sufficient duration and a sufficiently broad scope of subject matter to substitute for a full year of full time professional experience.

(d) Experience in Utah prehistoric or historic archeology shall include basic field, associated laboratory analysis and

reporting work based within any portion of the general physiographic and cultural regions found within the state boundaries.

**R694-1-5. Application for Permit to Survey.**

(a) A person who wishes to obtain a permit to survey shall obtain and complete an application form and submit the form and all other information required by the form to the Public Lands Policy Coordination Office.

(b) Other required information may include:

(i) Projects initiated under previous permits issued by the State of Utah which remain incomplete as of the date of application.

(ii) The applicant's employer or the name of the applicant's business, if self-employed.

(iii) A copy of an agreement to curate with an authorized curation facility in the name of the applicant or the applicant's employer.

**R694-1-6. Application for Permit to Excavate.**

(a)(i) A person who wishes to obtain a permit to excavate shall complete an application form and submit the original and two copies of the form and all other information required by the form to the Public Lands Policy Coordination Office.

(ii) The application form shall require the applicant to provide the information required by Subsection 9-8-305(3)(a).

(b) The Public Lands Policy Coordination Office shall forward one copy of the form and all other information requested to the Antiquities Section and one copy to the agency.

(c) If the Public Lands Policy Coordination Office has delegated the authority to issue a permit to excavate to another state agency, pursuant to Section R694-1-8, a person who wishes to obtain a permit to excavate on the lands owned by that agency shall submit an application to that agency.

**R694-1-7. Review of Permit Applications.**

(a) The Public Lands Policy Coordination Office may, at its sole discretion, seek the advice of one or more principal investigators as part of the review of an application for a permit to survey or a permit to excavate.

(b) Principal investigators who are authorized to provide advice on permits must hold a valid permit issued by the Public Lands Policy Coordination Office and must volunteer for the task.

(c) The Public Lands Policy Coordination Office shall keep a list of those principal investigators who volunteer, and shall make use of their services on a rotational basis, except that the Office shall avoid using the advice of any particular volunteer if a conflict of interest would thereby arise.

(d)(i) The Public Lands Policy Coordination Office shall notify the applicant within 30 calendar days whether or not the application is approved.

(ii) This time may be extended if additional information is required from the applicant.

**R694-1-8. Delegation of Authority to Issue a Permit to Excavate.**

(a) An agency which owns land within the state of Utah may request the delegation of the authority to issue permits to excavate for the lands it owns.

(b) The agency shall request the delegation by letter signed by the agency's authorized representative.

(c) The letter shall contain the proposed terms and conditions of the delegation, which shall include the information required by Subsection 9-8-305(3)(c)(ii), and agreement with the following conditions:

(i) each person approved for a permit to excavate by the agency shall hold a valid permit to survey from the Public Lands Policy Coordination Office at all times prior to and including the expiration date of the permit, including any extensions; and

(ii) the agency shall consult with the Antiquities Section regarding the research design of the proposed project prior to issuing the permit, and

(iii) permits issued by the agency pursuant to delegation shall contain the provisions required by Subsection R694-1-10(a), and for purposes of compliance and enforcement of the provisions of R694-1-10(a), a permit issued by the agency shall be considered a permit issued by the Public Lands Policy Coordination Office, and

(iv) the agency shall refer issues about performance of work by the permit holder to the Public Lands Policy Coordination Office through the process described in Section R694-1-11, and shall agree to amend, suspend, or revoke a permit according to the final results of that process, and to reinstate a permit only with the concurrence of the Public Lands Policy Coordination Office after compliance with the provisions of Section R694-1-12, and

(v) the agency and the Public Lands Policy Coordination Office shall review the operations of the delegation agreement at least annually, and

(vi) the Public Lands Policy Coordination Office may revoke the delegation at any time without cause, as provided by Subsection 9-8-305(3)(d).

(d) The agency and the Public Lands Policy Coordination Office shall formalize the terms of the delegation through a Memorandum of Understanding.

#### **R694-1-9. Time Period for Permits.**

(a) A Permit to Survey shall be effective for either

(i) three years from the date of issuance specified in the permit, or

(ii) for any other period of time

(A) as part of the response to an action initiated under Section R694-1-11, or

(B) for other administrative needs.

(b)(i) A Permit to Excavate shall be effective for the amount of time reasonably necessary to complete the research design's excavation, laboratory analysis, reporting and curation, as specified by a date of expiration in the Permit.

(ii) The time period of a Permit to Excavate may be extended, upon a showing of good cause to the Public Lands Policy Coordination Office, for a period of time to be specified by a new expiration date.

#### **R694-1-10. Permit Provisions.**

(a) The following provisions shall be included within each permit issued by the Public Lands Policy Coordination Office:

(i) Professional and Ethical Standards

(A) Permit holders shall comply with the individual provisions of the "Code of Conduct" and the "Standards of Research

Performance" promulgated by the Register of Professional Archeologists.

(B) If any of the provisions of the Code or Standards is altered, superseded or otherwise affected in any manner by these rules or other law, the rules and law shall take precedence, and permit holders shall comply with the rule or law.

(ii) Persons Employed by the Principal Investigator to Assist in the Field or Laboratory

By engaging in any field or laboratory work under any permit issued by the Public Lands Office, the principal investigator shall insure that persons hired or otherwise engaged to perform such work, or supervise field or laboratory work in the principal investigator's absence, are fully qualified to perform such work, and shall comply with the "Code of Conduct" and "Standards of Research Performance" as required by Subsection R694-1-10(a)(i).

(iii) Principal Investigators who are Employed by Others

(Reserved.)

(iv) Survey Methodologies

(Reserved.)

(v) Report and Data Format and Standards

(A) Reports of projects undertaken pursuant to permits issued by the Public Lands Policy Coordination Office shall conform to the format and standards which are attached to and made an integral part of the permit.

(B) The Public Lands Policy Coordination Office may amend the format and standards at any time during the time period of a permit, however, the permit holder shall have the option to continue to use the original format and standards for projects which are well into the reporting phase.

(C) Reports for individual projects and sites must contain an identification number obtained from the Division of State History prior to the commencement of fieldwork.

(D) Reports for individual projects must list all individuals who served in a supervisory capacity on the project.

(vi) Completion of Reports in a Timely Manner

(A) Reports of projects undertaken pursuant to any permit issued by the Public Lands Policy Coordination Office shall be completed and submitted to the agency and the Division of State History in a timely manner.

(B)(1) An agency may establish the parameters of timely manner through an agreement with the Division of State History and the Public Lands Policy Coordination Office.

(2) If an agreement has been finalized, the permit shall reference the agreement as the requirement for submission of reports for projects involving that agency's lands.

(3) For purposes of the requirements of Subsection R694-1-10(a)(vi)(B)(1), the term agency shall include an agency or other entity of the federal government.

(vii) Curation of Specimens

(A) The holder of any permit issued by the Public Lands Policy Coordination Office shall either hold a valid agreement with an authorized curation facility, or be covered under the authority of a curation agreement held by the employer of the permit holder, at all times during the time period of the permit.

(B) The holder of any permit issued by the Public Lands Policy Coordination Office shall keep the Office notified of any changes to the expiration date of the curation agreement required by Subsection R694-1-10(a)(vii)(A), or a change in employment.

(C) All specimens collected pursuant to any permit issued by the Public Lands Policy Coordination Office shall be deposited with the appropriate curation facility in a timely manner.

(viii) Discovery of Human Remains

Any person working under the authority of any permit issued by the Public Lands Policy Coordination Office who discovers human remains shall cease further activity in the area and shall notify the landowner, the antiquities section, and the appropriate law enforcement agencies, as required by Sections 9-9-403 and 76-9-704.

(ix) Access to Sites and Site Records

The holder of any permit issued by the Public Lands Policy Coordination Office agrees to cooperate with the Office to allow authorized Office employees access, at any reasonable time, to field and workings and records for the purpose of assuring compliance with the law, rules or permit provisions, subject to the provisions of other law, regulation or rule.

(x) Compliance with Law, Rule, and Permit Conditions

(A) Any person working under the authority of a permit issued by the Public Lands Policy Coordination Office shall comply with all laws, rules and permit conditions.

(B) Failure to comply may result in amendments to or the suspension or revocation of the permit, in addition to any other penalties authorized by law or rule.

(xi) The holder of the permit shall keep the Public Lands Policy Coordination Office apprised of any changes in the permittee's employment or business address and phone number, and changes in other business information as the Office may require.

(b) Permits issued by the Public Lands Policy Coordination Office may include such other provisions as the Office may deem necessary based on an individual's application.

(c) Permits to excavate issued by the Public Lands Policy Coordination Office shall require that the permit holder also hold a valid permit to survey issued by the Public Lands Policy Coordination Office at all times prior to and including the expiration date of the permit to excavate, including any extensions.

**R694-1-11. Amendment, Suspension or Revocation of Permits.**

(a)(i) Permits may be amended, suspended or revoked pursuant to the terms of this rule.

(ii) Permits may be amended, suspended, or revoked for violations of law, rule or permit provisions, or upon a finding by the Public Lands Policy Coordination Office that a permit holder is unfit to hold a permit due to a judicial or administrative determination concerning the character or competence of the individual.

(b)(i) Any agency may file a petition with the Public Lands Policy Coordination Office concerning the work performed under the provisions of any Permit to Survey or Permit to Excavate if the agency believes the work has been done in a manner which is contrary to law, rule or permit provisions.

(ii) The petition shall state with specificity the facts and circumstances involved and the law, rule or permit provision at issue, and shall be signed by the agency's authorized representative.

(iii) Each agency shall keep the Public Lands Policy Coordination Office informed of the name of the agency's authorized representative on an ongoing basis.

(c) The Public Lands Policy Coordination Office shall investigate the issues raised by the petition.

(d) The Public Lands Policy Coordination Office may initiate investigations into a permit holder's compliance with law, rule and permit provisions at its sole discretion, and may initiate a proceeding to amend, suspend or revoke a permit as a result of those investigations.

(e)(i) The Public Lands Policy Coordination Office may, at its sole discretion, seek the advice of one or more principal investigators as part of an investigation initiated by either petition or itself.

(ii) Principal investigators who are authorized to provide this advice must hold a valid permit issued by the Public Lands Policy Coordination Office and must volunteer for the task.

(iii) The Public Lands Policy Coordination Office shall keep a list of those principal investigators who volunteer, and shall make use of their services on a rotational basis, except that the Office shall avoid using the advice of any particular volunteer if a conflict of interest would thereby arise.

(f) The Public Lands Policy Coordination Office may choose to employ either informal or formal hearings as authorized by Subsection 63G-4-201(a)(v).

(g) The Public Lands Policy Coordination Office may resolve issues raised by a petition or by its own proceedings by

(i) dismissing the petition or otherwise terminating the proceedings, or

(ii) amending any of the provisions of an existing permit, or

(iii) imposing new conditions within an existing permit, or

(iv) suspending the permit, or

(v) revoking the permit, or

(vi) any other relief the Office may consider appropriate.

(h) The Public Lands Policy Coordination Office will immediately inform the Division of State History if a permit is suspended or revoked.

(i) The final notice of suspension or revocation shall state the reasons for the suspension or revocation.

**R694-1-12. Reinstatement of Permits.**

(a) The final notice of suspension or revocation from a proceeding held pursuant to Section R694-1-11 shall specify the conditions for reinstatement of the permit.

(b) The holder of the suspended or revoked permit may request reinstatement by submitting a letter to the Public Lands Policy Coordination Office indicating the reasons the reinstatement should be granted.

(c) The Public Lands Policy Coordination Office may request additional information.

(d) Reinstatement shall be granted at the sole discretion of the Public Lands Policy Coordination Office.

(e) A principal investigator who has had a permit suspended or revoked shall not be eligible for another permit until the principal investigator becomes eligible for reinstatement of the original permit.

**R694-1-13. Waiver of Provisions.**

(a) The Public Lands Policy Coordination Office may grant a waiver of the provisions of these rules, except for statutory provisions, in the interest of fairness, impossibility of performance, or other exigent or extenuating circumstances.

(b) This provision is to be employed to allow the Public Lands Policy Coordination Office to deal with generally unforseen circumstances, and should not be employed to grant broad scale general exceptions to the requirements of Rule R694-1.

**R694-1-14. Confidentiality.**

(Reserved.)

**KEY: archeological permits**

**Date of Enactment or Last Substantive Amendment: 2012**

**Authorizing, and Implemented or Interpreted Law: 9-8-305**

**Tax Commission, Administration**  
**R861-1A-9**  
**Tax Commission as Board of**  
**Equalization Pursuant to Utah Code**  
**Ann. Sections 59-2- 212, 59-2-1004,**  
**and 59-2-1006**

**NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE NO.: 35862

FILED: 02/09/2012

**RULE ANALYSIS**

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Section 59-2-1006 authorizes the Tax Commission to hear appeals from taxpayers dissatisfied with the decision of a county board of equalization (BOE).

SUMMARY OF THE RULE OR CHANGE: The proposed amendment deletes requirements related to appeals to a county BOE. Those provisions are included in a proposed amendment to Tax Commission Section R884-24P-66. Accordingly, it is proposed that this rule will only deal with property tax appeals to the Tax Commission while Section R884-24P-66 deals with property tax appeals to the county BOE. This proposed amendment renumbers the provisions concerning appeals to the Tax Commission, and makes some minor changes to those procedures, including the information that must be submitted to the Tax Commission when appealing a county BOE decision. The proposed amendment also allows a party to raise a new issue before the Tax Commission.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 59-2- 212 and Section 59-2-1004 and Section 59-2-1006

ANTICIPATED COST OR SAVINGS TO:

- ◆ THE STATE BUDGET: None--Property tax revenues are local revenues.
- ◆ LOCAL GOVERNMENTS: None--The proposed changes are procedural in nature.

◆ SMALL BUSINESSES: None--The proposed changes are procedural in nature.

◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: None--The proposed changes are procedural in nature.

COMPLIANCE COSTS FOR AFFECTED PERSONS: None--The proposed changes are procedural in nature.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There procedural clarifications should create no fiscal impact.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

TAX COMMISSION  
ADMINISTRATION  
210 N 1950 W  
SALT LAKE CITY, UT 84134-0002  
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Christa Johnson by phone at 801-297-3901, by FAX at 801-297-3907, or by Internet E-mail at [cj@utah.gov](mailto:cj@utah.gov)

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 04/02/2012

THIS RULE MAY BECOME EFFECTIVE ON: 04/09/2012

AUTHORIZED BY: Michael Cragun, Tax Commissioner

**R861. Tax Commission, Administration.**

**R861-1A. Administrative Procedures.**

**R861-1A-9. [Tax Commission as Board of Equalization] State Board of Equalization Procedures Pursuant to Utah Code Ann. Sections 59-2-212, 59-2-1004, and 59-2-1006.**

~~[A. Equalization Responsibilities. The Commission will sit as the State Board of Equalization in discharge of the equalization responsibilities given it by law. The Commission may sit on its own initiative to correct the valuation of property that has been overassessed, underassessed, or nonassessed as described in Section 59-2-212, and as a board of appeal from the various county boards of equalization described in Section 59-2-1004.~~

~~B. Proceedings. In all cases, appeals to the Commission shall be scheduled for hearing pursuant to Commission rules.~~

~~C. Appeals from county boards of equalization.~~

~~1. A notice of appeal filed by the taxpayer with the auditor pursuant to Section 59-2-1006 shall be presumed to have been timely filed unless the county provides convincing evidence to the contrary. In the absence of evidence of the date of mailing of the county board of equalization decision by the county auditor to the taxpayer, it shall be presumed that the decision was mailed three days after the meeting of the county board of equalization at which the decision was made.~~

~~2. If the county has not formally adopted board of equalization rules and procedures under Section 59-2-1001 that~~

have been approved by the Commission, the procedures contained in this rule must be followed.

3. An appeal from a decision of a county board must be presented upon the same issues as were submitted to the county board in the first instance. The Commission shall consider, but is not limited to, the facts and evidence submitted to the county board.

4. The county board of equalization or county hearing officer shall prepare minutes of hearings held before them on property tax appeals. The minutes shall constitute the record on appeal.

a) For appeals concerning property value, the record shall include:

(1) the name and address of the property owner;

(2) the identification number, location, and description of the property;

(3) the value placed on the property by the assessor;

(4) the basis stated in the taxpayer's appeal;

(5) facts and issues raised in the hearing before the county board that are not clearly evident from the assessor's records; and

(6) the decision of the county board of equalization and the reasons for the decision.

b) Exempt Property. With respect to a decision affecting the exempt status of a property, the county board of equalization shall prepare its decision in writing, stating the reasons and statutory basis for the decision.

5. Appeals from dismissal by the county boards of equalization.

a) Decisions by the county board of equalization are final orders on the merits, and appeals to the Commission shall be on the merits except for the following:

(1) dismissal for lack of jurisdiction;

(2) dismissal for lack of timeliness;

(3) dismissal for lack of evidence to support a claim for relief.

b) On an appeal from a dismissal by a county board for the exceptions under C.5.a), the only matter that will be reviewed by the Commission is the dismissal itself, not the merits of the appeal.

c) An appeal may be dismissed for lack of jurisdiction when the claimant limits arguments to issues not under the jurisdiction of the county board of equalization.

6. An appeal filed with the Commission may be remanded to the county board of equalization for further proceedings if the Commission determines that:

a) dismissal under C.5.a)(1) or (3) was improper;

b) the taxpayer failed to exhaust all administrative remedies at the county level; or

c) in the interest of administrative efficiency, the matter can best be resolved by the county board.

7. An appeal filed with the Commission shall be remanded to the county board of equalization for further proceedings if the Commission determines that dismissal under C.5.a)(2) is improper under R884-24P-66.

8. To achieve standing with the county board of equalization and have a decision rendered on the merits of the case, the taxpayer shall provide the following minimum information to the county board of equalization:

a) the name and address of the property owner;

b) the identification number, location, and description of the property;

c) the value placed on the property by the assessor;

d) the taxpayer's estimate of the fair market value of the property; and

e) a signed statement providing evidence or documentation that supports the taxpayer's claim for relief.

9. If no signed statement is attached, the county will notify the taxpayer of the defect in the claim and permit at least ten calendar days to cure the defect before dismissing the matter for lack of sufficient evidence to support the claim for relief.

10. If the taxpayer appears before the county board of equalization and fails to produce the evidence or documentation under C.8.e), the county shall send the taxpayer a notice of intent to dismiss, and permit the taxpayer at least 20 calendar days to supply the evidence or documentation. If the taxpayer fails to provide the evidence or documentation within 20 days, the county board of equalization may dismiss the matter for lack of evidence to support a claim for relief.

11. If the minimum information required under C.8. is supplied and the taxpayer produces the evidence or documentation described in the taxpayer's signed statement under C.8.e), the county board of equalization shall render a decision on the merits of the case. (1) The commission sits as the state board of equalization in discharge of the equalization responsibilities given it by law. The commission may sit on its own initiative to correct the valuation of property that has been overassessed, underassessed, or nonassessed as described in Section 59-2-212, and as a board of appeal from the various county boards of equalization described in Section 59-2-1004.

(2) Appeals to the commission shall include:

(a) a copy of the recommendation of a hearing officer if a hearing officer heard the appeal;

(b) a copy of the notice required under Section 59-2-919;

(c) a copy of the minutes of the board of equalization;

(d) a copy of the property record maintained by the assessor;

(e) if the county board of equalization does not include the record in its minutes, a copy of the record of the appeal required under R884-24P-66;

(f) a copy of the evidence submitted by the parties to the board of equalization;

(g) a copy of the petition for redetermination; and

(h) a copy of the decision of the board of equalization.

(3) A notice of appeal filed by the taxpayer with the auditor pursuant to Section 59-2-1006 shall be presumed to have been timely filed unless the county provides convincing evidence to the contrary. In the absence of evidence of the date of mailing of the county board of equalization decision by the county auditor to the taxpayer, it shall be presumed that the decision was mailed three days after the meeting of the county board of equalization at which the decision was made.

(4) Appeals to the commission shall be scheduled for hearing pursuant to commission rules.

(5) Appeals to the commission shall be on the merits, except for the following:

(a) dismissal for lack of jurisdiction;

(b) dismissal for lack of timeliness;

(c) dismissal for lack of evidence to support a claim for relief.

(6)(a) The commission shall consider, but is not limited to, the facts and evidence submitted to the county board.

(b) A party may raise a new issue before the commission.

(7) On an appeal from a dismissal by a county board for the exceptions under Subsection (5), the only matter that will be reviewed by the commission is the dismissal itself, not the merits of the appeal.

(8) An appeal filed with the commission may be remanded to the county board of equalization for further proceedings if the commission determines that:

(a) dismissal under Subsection (5)(a) or (c) was improper;

(b) the taxpayer failed to exhaust all administrative remedies at the county level;

(c) in the interest of administrative efficiency, the matter can best be resolved by the county board;

(d) the commission determines that dismissal under Subsection (5)(a)(c) is improper under R884-24P-66; or

(e) a new issue is raised before the commission by a party.

(9) The provisions of this rule apply only to appeals to the commission as the state board of equalization. For information regarding appeals to the county board of equalization, please see Section 59-2-1004 and R884-24P-66.

**KEY: developmental disabilities, grievance procedures, taxation, disclosure requirements**

**Date of Enactment or Last Substantive Amendment: [December 8, 2011]2012**

**Notice of Continuation: March 20, 2007**

**Authorizing, and Implemented or Interpreted Law: 10-1-405; 41-1a-209; 52-4-207; 59-1-205; 59-1-207; 59-1-210; 59-1-301; 59-1-302.1; 59-1-304; 59-1-401; 59-1-403; 59-1-404; 59-1-405; 59-1-501; 59-1-502.5; 59-1-602; 59-1-611; 59-1-705; 59-1-706; 59-1-1004; 59-1-1404; 59-7-505; 59-10-512; 59-10-532; 59-10-533; 59-10-535; 59-12-107; 59-12-114; 59-12-118; 59-13-206; 59-13-210; 59-13-307; 59-10-544; 59-14-404; 59-2-212; 59-2-701; 59-2-705; 59-2-1003; 59-2-1004; 59-2-1006; 59-2-1007; 59-2-704; 59-2-924; 59-7-517; 63G-3-301; 63G-4-102; 76-8-502; 76-8-503; 59-2-701; 63G-4-201; 63G-4-202; 63G-4-203; 63G-4-204; 63G-4-205 through 63G-4-209; 63G-4-302; 63G-4-401; 63G-4-503; 63G-3-201(2); 68-3-7; 68-3-8.5; 69-2-5; 42 USC 12201; 28 CFR 25.107 1992 Edition**

## Tax Commission, Auditing R865-3C-1

### Allocation of Net Income Pursuant to Utah Code Ann. Section 59-7-204

#### NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 35863

FILED: 02/09/2012

#### RULE ANALYSIS

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** The proposed amendment updates the section to match statutory changes.

**SUMMARY OF THE RULE OR CHANGE:** The proposed amendment updates this section to match statutory changes regarding when an out-of-state corporation with Utah income shall attribute receipts arising from royalties and intangible property to the state.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 59-7-204

**ANTICIPATED COST OR SAVINGS TO:**

♦ **THE STATE BUDGET:** None--The amendments update the rule to match current statute and processes.

♦ **LOCAL GOVERNMENTS:** None--The amendments update the rule to match current statute and processes.

♦ **SMALL BUSINESSES:** None--The amendments update the rule to match current statute and processes.

♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** None--The amendments update the rule to match current statute and processes.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** None--The amendments update the rule to match current statute and processes.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** Adoption of this amendment will create no new fiscal impact as the rule will then match current statute and practice.

**THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:**

TAX COMMISSION

AUDITING

210 N 1950 W

SALT LAKE CITY, UT 84134

or at the Division of Administrative Rules.

**DIRECT QUESTIONS REGARDING THIS RULE TO:**

♦ Christa Johnson by phone at 801-297-3901, by FAX at 801-297-3907, or by Internet E-mail at [cj@utah.gov](mailto:cj@utah.gov)

**INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 04/02/2012**

**THIS RULE MAY BECOME EFFECTIVE ON: 04/09/2012**

**AUTHORIZED BY: Michael Cragun, Tax Commissioner**

**R865. Tax Commission, Auditing.**  
**R865-3C. Corporation Income Tax.**  
**R865-3C-1. Allocation of Net Income Pursuant to Utah Code Ann. Section 59-7-204.**

(1) In general, the provisions of Section R865-6F-8 shall be applied to determine net income attributable to Utah for corporation income tax purposes.

(2) If a corporation derives income from sources within this state, but does not maintain an office within this state from which sales are negotiated or effected, the gross receipts attributable to Utah shall include all receipts of the corporation ~~for the~~:

(a) ~~for the~~ performance of a service if the purchaser of the service receives a greater benefit of the service in this state than in any other state; ~~and~~

(b) ~~for the~~ sale of goods delivered to this state or shipped to a purchaser within this state, regardless of the F.O.B. point or other conditions of the sale;

~~(c) from a royalty in connection with real property if the real property is in this state;~~

~~(d) from other income in connection with real or tangible personal property if the real or tangible personal property is in this state; and~~

~~(e) in connection with intangible property if the intangible property is used in this state.~~

**KEY: taxation, corporation tax**

**Date of Enactment or Last Substantive Amendment: [~~October 13, 2011~~2012]**

**Notice of Continuation: March 21, 2007**

**Authorizing, and Implemented or Interpreted Law: 59-7-204**

**Tax Commission, Property Tax**  
**R884-24P-66**  
**Appeal to County Board of Equalization**  
**Pursuant to Utah Code Ann. Section**  
**59-2-1004**

**NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE NO.: 35864

FILED: 02/09/2012

**RULE ANALYSIS**

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Section 59-2-1004 requires the Tax Commission to promulgate rules providing for circumstances under which a county board of equalization shall accept an appeal filed after the appeal filing period has ended. This section includes

factual error as condition that requires a hearing on an otherwise late filed appeal, and the proposed amendment refines the circumstances that qualify as factual error. In addition, the section is amended to add procedures that a county board of equalization (BOE) is required to follow if the county BOE has not enacted its own procedures.

**SUMMARY OF THE RULE OR CHANGE:** The proposed amendment provides that factual error includes an error if both the taxpayer and the assessor agree, including an error in the classification of a property that is eligible for valuation under the Farmland Assessment Act. In addition, the amendment includes procedures a county BOE must follow if the county BOE has not enacted its own procedures. These procedures are, in large part, procedures that were formerly found in Tax Commission Section R861-1A-9. In bringing the procedures from Section R861-1A-9 to this rule, the commission proposes: 1) repealing the provision allowing a taxpayer who appears before a county BOE and fails to produce a signed statement containing evidence supporting the taxpayer's claim for relief an additional twenty days to provide that statement; and 2) requiring the county BOE to maintain a record of the appeal.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 59-2-1004

**ANTICIPATED COST OR SAVINGS TO:**

♦ **THE STATE BUDGET:** None--Property tax revenues are local revenues.

♦ **LOCAL GOVERNMENTS:** Potential immaterial gain--The proposed amendment may narrow the number of property tax appeals before a county board of equalization, which in turn may decrease the number of property tax appeals decided in favor of taxpayers.

♦ **SMALL BUSINESSES:** Potential immaterial gain--The proposed amendment may narrow the number of property tax appeals before a county board of equalization, which in turn may decrease the number of property tax appeals decided in favor of taxpayers.

♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** Potential immaterial gain--The proposed amendment may narrow the number of property tax appeals before a county board of equalization, which in turn may decrease the number of property tax appeals decided in favor of taxpayers.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** None--The proposed amendment may narrow the number of property tax appeals before a county board of equalization.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** This amendment may preclude a taxpayer who might qualify for relief under the current rule from obtaining relief under the new section.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED,  
DURING REGULAR BUSINESS HOURS, AT:

TAX COMMISSION  
PROPERTY TAX  
210 N 1950 W  
SALT LAKE CITY, UT 84134  
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Christa Johnson by phone at 801-297-3901, by FAX at 801-297-3907, or by Internet E-mail at [cj@utah.gov](mailto:cj@utah.gov)

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON  
THIS RULE BY SUBMITTING WRITTEN COMMENTS NO  
LATER THAN AT 5:00 PM ON 04/02/2012

THIS RULE MAY BECOME EFFECTIVE ON: 04/09/2012

AUTHORIZED BY: Michael Cragun, Tax Commissioner

**R884. Tax Commission, Property Tax.**

**R884-24P. Property Tax.**

**R884-24P-66. ~~[Appeal to]~~ County Board of Equalization Procedures and Appeals Pursuant to Utah Code Ann. Section 59-2-1004.**

(1)(a) "Factual error" means an error that is:

(i) objectively verifiable without the exercise of discretion, opinion, or judgment~~[-and]~~;

(ii) demonstrated by clear and convincing evidence; and

~~(iii) agreed upon by the taxpayer and the assessor.~~

(b) Factual error includes:

(i) a mistake in the description of the size, use, or ownership of a property;

(ii) a clerical or typographical error in reporting or entering the data used to establish valuation or equalization;

(iii) an error in the classification of a property that is eligible for a property tax exemption under:

(A) Section 59-2-103; or

(B) Title 59, Chapter 2, Part 11;

~~(iv) an error in the classification of a property that is eligible for assessment under Title 59, Chapter 2, Part 5;~~

~~(v) valuation of a property that is not in existence on the lien date; and~~

~~(vi) a valuation of a property assessed more than once, or by the wrong assessing authority.~~

(c) Factual error does not include:

(i) an alternative approach to value;

~~(ii) a change in a factor or variable used in an approach to value; or~~

~~(iii) any other adjustment to a valuation methodology.~~

(2) If the county has not formally adopted board of equalization rules and procedures under Section 59-2-1001 that have been approved by the commission, the procedures contained in this rule must be followed.

~~(3) To achieve standing with the county board of equalization and have a decision rendered on the merits of the case, the taxpayer shall provide the following minimum information to the county board of equalization:~~

~~(a) the name and address of the property owner;~~

~~(b) the identification number, location, and description of the property;~~

~~(c) the value placed on the property by the assessor;~~

~~(d) the taxpayer's estimate of the fair market value of the property; and~~

~~(e) a signed statement indicating the evidence or documentation that the taxpayer will present to the county board of equalization.~~

~~(4) If the signed statement required under Subsection (3) (e) is not attached, the county will notify the taxpayer of the defect in the claim and permit at least ten calendar days to cure the defect before dismissing the matter for lack of sufficient evidence to support the claim for relief.~~

~~(5) If the taxpayer appears before the county board of equalization and fails to produce the evidence or documentation described under Subsection (3)(e) and the county has notified the taxpayer under Subsection (4), the county may dismiss the matter for lack of evidence to support a claim for relief.~~

~~(6) If the minimum information required under Subsection (3) is supplied and the taxpayer produces the evidence or documentation described in the taxpayer's signed statement under Subsection (3)(e), the county board of equalization shall render a decision on the merits of the case.~~

~~(7) The county board of equalization may dismiss an appeal for lack of jurisdiction when the claimant limits arguments to issues not under the jurisdiction of the county board of equalization.~~

~~(8) The county board of equalization shall prepare and maintain a record of the appeal.~~

~~(a) For appeals concerning property value, the record shall include:~~

~~(i) the name and address of the property owner;~~

~~(ii) the identification number, location, and description of the property;~~

~~(iii) the value placed on the property by the assessor;~~

~~(iv) the basis for appeal stated in the taxpayer's appeal;~~

~~(v) facts and issues raised in the hearing before the county board that are not clearly evident from the assessor's records; and~~

~~(vi) the decision of the county board of equalization and the reasons for the decision.~~

~~(b) The record may be included in the minutes of the hearing before the county board of equalization.~~

~~(9)(a) The county board of equalization shall notify the taxpayer in writing of its decision.~~

~~(b) The notice required under Subsection (9)(a) shall include:~~

~~(i) the name and address of the property owner;~~

~~(ii) the identification number of the property;~~

~~(iii) the date the notice was sent;~~

~~(iv) a notice of appeal rights to the commission; and~~

(v) a statement of the decision of the county board of equalization; or

(vi) a copy of the decision of the county board of equalization.

(10) A county shall maintain a copy of a notice sent to a taxpayer under Subsection (9).

(11) If a decision affects the exempt status of a property, the county board of equalization shall prepare its decision in writing, stating the reasons and statutory basis for the decision.

(12) Decisions by the county board of equalization are final orders on the merits.

~~(2)~~(13) Except as provided in Subsection ~~[(4)](15)~~, a county board of equalization shall accept an application to appeal the valuation or equalization of a property owner's real property that is filed after the time period prescribed by Section 59-2-1004(2)(a) if any of the following conditions apply:

(a) During the period prescribed by Section 59-2-1004(2)(a), the property owner was incapable of filing an appeal as a result of a medical emergency to the property owner or an immediate family member of the property owner, and no co-owner of the property was capable of filing an appeal.

(b) During the period prescribed by Section 59-2-1004(2)(a), the property owner or an immediate family member of the property owner died, and no co-owner of the property was capable of filing an appeal.

(c) The county did not comply with the notification requirements of Section 59-2-919.1.

(d) A factual error is discovered in the county records pertaining to the subject property.

(e) The property owner was unable to file an appeal within the time period prescribed by Section 59-2-1004(2)(a) because of extraordinary and unanticipated circumstances that occurred during the period prescribed by Section 59-2-1004(2)(a), and no co-owner of the property was capable of filing an appeal.

~~(3)~~(14) Appeals accepted under Subsection ~~[(2)](13)~~(d) shall be limited to correction of the factual error and any resulting changes to the property's valuation.

~~(4)~~(15) The provisions of Subsection ~~[(2)](13)~~ apply only to appeals filed for a tax year for which the treasurer has not made a final annual settlement under Section 59-2-1365.

~~(5)~~(16) The provisions of this rule apply only to appeals to the county board of equalization. For information regarding appeals of county board of equalization decisions to the Commission, please see Section 59-2-1006 and R861-1A-9.

**KEY: taxation, personal property, property tax, appraisals**

**Date of Enactment or Last Substantive Amendment: [~~October 27, 2011~~]**2012****

**Notice of Continuation: January 3, 2012**

**Authorizing, and Implemented or Interpreted Law: Art. XIII, Sec 2; 9-2-201; 11-13-302; 41-1a-202; 41-1a-301; 59-1-210; 59-2-102; 59-2-103; 59-2-103.5; 59-2-104; 59-2-201; 59-2-210; 59-2-211; 59-2-301; 59-2-301.3; 59-2-302; 59-2-303; 59-2-303.1; 59-2-305; 59-2-306; 59-2-401; 59-2-402; 59-2-404; 59-2-405; 59-2-405.1; 59-2-406; 59-2-508; 59-2-514; 59-2-515; 59-2-701; 59-2-702; 59-2-703; 59-2-704; 59-2-704.5; 59-2-705; 59-2-801; 59-2-918 through 59-2-924; 59-2-1002; 59-2-1004; 59-2-1005; 59-2-1006; 59-2-1101; 59-2-1102; 59-2-1104; 59-2-1106; 59-2-1107**

**through 59-2-1109; 59-2-1113; 59-2-1115; 59-2-1202; 59-2-1202(5); 59-2-1302; 59-2-1303; 59-2-1308.5; 59-2-1317; 59-2-1328; 59-2-1330; 59-2-1347; 59-2-1351; 59-2-1365**

## Transportation, Motor Carrier **R909-1** Safety Regulations for Motor Carriers

### NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 35873

FILED: 02/14/2012

### RULE ANALYSIS

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** The purpose of this change is to incorporate by reference and adopt changes in the Federal Motor Carrier Safety Regulations as of 10/01/2011, and the Federal Register as of 01/12/2012, and to add enforcement provisions authorized by statute.

**SUMMARY OF THE RULE OR CHANGE:** Rule R909-1 is amended to include an exemption for licensed child care providers and the minimum coverage required by Section 72-9-103, which became effective after the passage of H.B. 314 in the 2011 General Session. This rule amendment also incorporates the current Federal Motor Carrier Safety Regulations (FMCSR). Changes to the FMCSR's since the last incorporated version include corrections to the knowledge and skills testing standards for the commercial driver's license (CDL). The adoption of the Federal Register includes information to develop the process required to transmit, receive, record, and update information on a Commercial Driver License Information System (CDLIS) driver record. The register also restricts the use of hand-held mobile telephones by drivers of commercial motor vehicles (CMVs), and revises the hours of service (HOS) regulations. The new HOS regulations limit the use of the 34-hour restart provision and allow truckers to drive if they have had a break of at least 30 minutes within the previous 8 hours. A specific HOS oilfield exemption in 395.1(d)(2), and the definition of on-duty time become effective on 02/27/2012, and all other HOS changes take effect on 07/01/2013.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 72-9-103 and Section 72-9-104 and Section 72-9-301 and Section 72-9-303 and Section 72-9-701 and Section 72-9-703

**MATERIALS INCORPORATED BY REFERENCES:**

- ◆ Updates 49 CFR Parts 350 through 384, Parts 386 through 399, and Part 40, published by Government Printing Office, October 1, 2011

## ANTICIPATED COST OR SAVINGS TO:

- ◆ THE STATE BUDGET: There are no anticipated costs or savings to the state budget because the changes to the Federal Motor Carrier Safety Regulations will already be in effect and this rule amendment incorporates these regulations to enable the department to enforce them.
- ◆ LOCAL GOVERNMENTS: There are no anticipated costs or savings to local government because the changes to the Federal Motor Carrier Safety Regulations will already be in effect and this rule amendment incorporates these regulations to enable the department to enforce them.
- ◆ SMALL BUSINESSES: There are no anticipated costs or savings to small business because the changes to the Federal Motor Carrier Safety Regulations will already be in effect and this rule amendment incorporates these regulations to enable the department to enforce them.
- ◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: There are no anticipated costs or savings to persons other than small businesses, businesses, or local government entities because the changes to the Federal Motor Carrier Safety Regulations will already be in effect and this rule amendment incorporates these regulations to enable the department to enforce them.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Anticipated costs related to the restriction of hand-held mobile phones to intrastate carriers and small businesses could include a possible upgrade from a non-compliant mobile telephone to a compliant one. This cost has been estimated to be as low as \$29.99 for motor carrier drivers. The FMCSA has estimated that the total costs of complying with the changes to the HOS rule would equate to roughly one-third of one percent of industry revenue.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: A fiscal impact on businesses may include the anticipated costs related to the restriction of hand-held mobile phones to intrastate carriers, which could include a possible upgrade from a non-compliant mobile telephone to a compliant one. This cost has been estimated to be as low as \$29.99 for motor carrier drivers. The FMCSA has estimated that the total costs of complying with the changes to the HOS rule would equate to roughly one-third of one percent of the motor carrier industry revenue.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

TRANSPORTATION  
MOTOR CARRIER  
CALVIN L RAMPTON COMPLEX  
4501 S 2700 W  
SALT LAKE CITY, UT 84119-5998  
or at the Division of Administrative Rules.

## DIRECT QUESTIONS REGARDING THIS RULE TO:

- ◆ Christine Newman by phone at 801-965-4026, by FAX at 801-965-4338, or by Internet E-mail at [cnewman@utah.gov](mailto:cnewman@utah.gov)

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 04/02/2012

THIS RULE MAY BECOME EFFECTIVE ON: 04/09/2012

AUTHORIZED BY: John Njord, Executive Director

**R909. Transportation, Motor Carrier.****R909-1. Safety Regulations for Motor Carriers.****R909-1-1. Authority and Purpose.**

This Rule is enacted under the authority of Section 72-9-103 to enable the department to enforce the Federal Motor Carrier Safety Regulations as contained in Title 49, Code of Federal Regulations related to the operation of a motor carrier within the state, as required by Section 72-9-301.

**R909-1-2. Adoption of Federal Regulations.**

(1) Safety Regulations for Motor Carriers, 49 CFR Parts 350 through 384, Parts 386 through 399, and Part 40, (October 1, 2011) [1], as amended by the Federal Register through [June 6] January 12, 2011 [2] are incorporated by reference, except for Parts 391.11(b)(1) and 391.49 as it applies to intrastate drivers only. These requirements apply to all motor carrier(s) as defined in 49 CFR Part 390.5, excluding commercial motor vehicles which are designed or used to transport more than 8 and less than 15 passengers (including the driver) for compensation and Section 72-9-102(2) engaged in intrastate commerce.

(2) Intrastate trucking operations in which the carriers operate double trailer combinations only are not required to comply with 49 CFR Part 380.203(a)(2).

(3) Exceptions to Part 391.41, Physical Qualification may be granted under the rules of Department of Public Safety, Driver's License Division, Section 53-3-303.5 for intrastate drivers under R708-34.

(4) Drivers involved wholly in intrastate commerce shall be at least 18 years old. However, if they are transporting placarded amounts of hazardous materials or carrying 16 or more passengers, including the driver, they must be 21 years old.

(5) Licensed child care providers operating a passenger vehicle with a seating capacity of not more than 30 passengers, and wholly in intrastate commerce, are exempt from 49 CFR Part 387 Subpart B but are subject to the minimum coverage requirements in Section 72-9-103.

**R909-1-3. Insurance for Private Intrastate/Interstate Motor Carriers.**

(1) "Private Motor Carrier" means a person who provides transportation of property or passengers by commercial motor vehicle and is not a for-hire motor carrier.

(2) All intrastate private motor carriers shall have a minimum amount of \$750,000 liability.

(3) All intrastate for-hire and private motor carriers transporting any quantities of oil listed in 49 CFR 172.101; hazardous waste, hazardous material and hazardous substances defined in 49 CFR 171.101, shall have \$1,000,000 minimum level of financial responsibility and a MCS-90 endorsement maintained at the principal place of business.

**R909-1-4. Implements of Husbandry.**

"Implements of Husbandry" is defined in Section 41-1a-102(23) and must be in compliance with all provisions of Chapter 6, Title 41, Utah Code Annotated. Vehicles meeting this definition are exempt from 49 CFR Part 393 - Parts and Accessories Necessary for Safe Operations.

**R909-1-5. Cease and Desist Order - Registration Sanctions.**

As authorized by Section 72-9-303, the department may issue cease and desist orders to any motor carrier that fails or neglects to comply with State and Federal Motor Carrier Safety Regulations or any part of this rule.

**R909-1-6. Penalties and Fines.**

Any motor carrier that fails or neglects to comply with State or Federal Motor Carrier Safety Regulations or any part of this rule is subject to a civil penalty as authorized by Sections 72-9-701 and 72-9-703.

**R909-1-7. Motor Carriers Delinquent in Paying Civil Penalties; Prohibition on Transportation.**

Pursuant to Section 72-9-303, a motor carrier that has failed to pay civil penalties imposed by the department, or has failed to abide by a payment plan, may be prohibited from operating commercial motor vehicles in intrastate or interstate commerce.

**KEY: trucks, transportation safety, implements of husbandry**

**Date of Enactment or Last Substantive Amendment: [~~January 10,~~ 2012**

**Notice of Continuation: November 1, 2011**

**Authorizing, and Implemented or Interpreted Law: 72-9-103; 72-9-104; 72-9-101; 72-9-301; 72-9-303; 72-9-701; 72-9-703**

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**End of the Notices of Proposed Rules Section**



## FIVE-YEAR NOTICES OF REVIEW AND STATEMENTS OF CONTINUATION

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Within five years of an administrative rule's original enactment or last five-year review, the agency is required to review the rule. This review is intended to remove obsolete rules from the Utah Administrative Code. Upon reviewing a rule, an agency may: repeal the rule by filing a **PROPOSED RULE**; continue the rule as it is by filing a **NOTICE OF REVIEW AND STATEMENT OF CONTINUATION (NOTICE)**; or amend the rule by filing a **PROPOSED RULE** and by filing a **NOTICE**. By filing a Notice, the agency indicates that the rule is still necessary.

**NOTICES** are not followed by the rule text. The rule text that is being continued may be found in the most recent edition of the *Utah Administrative Code*. The rule text may also be inspected at the agency or the Division of Administrative Rules. **NOTICES** are effective upon filing.

**NOTICES** are governed by Section 63G-3-305.

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### Commerce, Occupational and Professional Licensing

### **R156-11a**

### Barber, Cosmetologist/Barber, Esthetician, Electrologist and Nail Technician Licensing Act Rule

#### FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 35853  
FILED: 02/06/2012

#### NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Title 58, Chapter 11a, provides for the licensure of barber, barber instructor, barber school, cosmetologist/barber, cosmetologist/barber instructor, cosmetology/barber school, electrologist, electrologist instructor, electrology school, esthetician, master-level esthetician, esthetics instructor, esthetics school, nail technician, nail technician instructor, and nail technology school. Subsection 58-1-106(1)(a) provides that the Division may adopt and enforce rules to administer Title 58. Subsection 58-11a-201(3) provides that the Barbering, Cosmetology/Barbering, Esthetics, Electrology and Nail Technology Licensing Board's duties and responsibilities shall be in accordance with Section 58-1-202. Subsection 58-1-202(1)(a) provides that one of the duties of each board is to recommend appropriate rules to the Division Director. This rule was enacted to clarify the provisions of Title 58, Chapter 11a, with respect to the license classifications noted above.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: Since this rule was last reviewed in April 2007, it has been amended five times. The Division received a 07/12/2010 email from Candace Daly in which she suggested proposed wording with respect to a Utah electrologist examination be deleted. It should be noted that the proposed rule filing (DAR No. 33704) in which Ms. Daly made her comment was allowed to lapse by the Division. The Division refiled a proposed rule amendment filing (DAR No. 34123) in which Ms. Daly's suggestion was included in the proposed amendments in that filing. The Division also received a 09/18/2007 email from Hunter Finch, Governor's Rules Analyst, notifying the Division of an incorrect statutory citation. The Division filed a nonsubstantive rule change on 09/18/2007 to correct the error. The Division also received a 02/02/2012 email from David Nelson in which Mr. Nelson opposes wording in Subsection R156-11a-302(1)(a) with respect to Title 78, Chapter 5, Part 4.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule should be continued as it provides a mechanism to inform potential licensees of the requirements for licensure as allowed under statutory authority provided in Title 58, Chapter 11a, with respect to various license classifications noted above. The rule should also be continued as it provides information to ensure applicants for licensure are adequately trained and meet minimum licensure requirements and provides licensees with information concerning unprofessional conduct, definitions and ethical standards relating to the profession. In response to Mr. Nelson's written comments about his opposition to wording in Subsection R156-11a-302(1)(a), the Division does not disagree with the facts of Mr. Nelson's comments. The Division disagrees with Mr. Nelson's requested solution to amend the rule due to a Supreme Court ruling that might

invalidate a Utah statute referred to in this rule. The Division has spoken with Mr. Nelson multiple times regarding various Division rules and does not intend to follow his requested solution.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

COMMERCE  
OCCUPATIONAL AND PROFESSIONAL  
LICENSING  
HEBER M WELLS BLDG  
160 E 300 S  
SALT LAKE CITY, UT 84111-2316  
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Sally Stewart by phone at 801-530-6179, by FAX at 801-530-6511, or by Internet E-mail at sstewart@utah.gov

AUTHORIZED BY: Mark Steinagel, Director

EFFECTIVE: 02/06/2012

**Commerce, Occupational and  
Professional Licensing  
R156-55d  
Burglar Alarm Licensing Rule**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT  
OF CONTINUATION**

DAR FILE NO.: 35860  
FILED: 02/07/2012

**NOTICE OF REVIEW AND STATEMENT OF  
CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Title 58, Chapter 55, provides for the licensure of alarm companies and alarm company agents. Subsection 58-1-106(1)(a) provides that the Division may adopt and enforce rules to administer Title 58. Subsection 58-55-201(2)(b) provides that one of the Alarm System Security and Licensing Board's duties is to recommend appropriate rules to the Construction Services Commission. Subsection 58-55-103(1)(b) provides that one of the duties of the Construction Services Commission is to make appropriate rules with respect to Title 58, Chapter 55, with the concurrence of the Division Director. This rule was enacted to clarify the provisions of Title 58, Chapter 55, with respect to alarm companies and alarm company agents.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR

OPPOSING THE RULE: Since this rule was last reviewed in February 2010, it has been amended one time. The Division received a 12/29/2010 email and a 02/02/2012 email from David Nelson in which Mr. Nelson opposed wording in Subsection R156-55d-302f(1)(c) with respect to Title 78, Chapter 5, Part 4.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule should be continued as it provides a mechanism to inform potential licensees of the requirements for licensure as allowed under statutory authority provided in Title 58, Chapter 55, with respect to alarm companies and alarm company agents. The rule should also be continued as it provides information to ensure applicants for licensure are adequately trained and meet minimum licensure requirements and provides licensees with information concerning unprofessional conduct, definitions, and ethical standards relating to the profession. In response to Mr. Nelson's written comments about his opposition to wording in Subsection R156-55d-302f(1)(c), the Division does not disagree with the facts of Mr. Nelson's comments. The Division disagrees with Mr. Nelson's requested solution to amend the rule due to a Supreme Court ruling that might invalidate a Utah statute referred to in this rule. The Division has spoken with Mr. Nelson multiple times regarding various Division rules and does not intend to follow his requested solution.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

COMMERCE  
OCCUPATIONAL AND PROFESSIONAL  
LICENSING  
HEBER M WELLS BLDG  
160 E 300 S  
SALT LAKE CITY, UT 84111-2316  
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Clyde Ormond by phone at 801-530-6254, by FAX at 801-530-6511, or by Internet E-mail at cormond@utah.gov

AUTHORIZED BY: Mark Steinagel, Director

EFFECTIVE: 02/07/2012

**Commerce, Occupational and  
Professional Licensing  
R156-78B  
Prelitigation Panel Review Rule**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT  
OF CONTINUATION**DAR FILE NO.: 35820  
FILED: 02/02/2012**NOTICE OF REVIEW AND STATEMENT OF  
CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Title 78B, Chapter 3, Part 4, provides that the Division of Occupational and Professional Licensing shall be responsible for a medical liability prelitigation program. Subsection 78B-3-416(1)(b) provides the Division shall establish procedures for prelitigation consideration of medical liability claims for damages arising out of the provision of or alleged failure to provide health care and provides the Division may establish rules necessary to administer the process and procedures related to prelitigation hearings and the conduct of prelitigation hearings in accordance with Sections 78B-3-416 through 78B-3-402. This rule was enacted to clarify the provisions of Title 78B, Chapter 3, Part 4, with respect to the medical liability prelitigation program.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: Since this rule was last reviewed in April 2007, it has been amended four times. However, the Division has received no written comments with respect to this rule.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule should be continued as it provides a mechanism to inform persons of the Division's requirements with respect to the medical liability prelitigation program as provided in Sections 78-14-12 through 78-14-16.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

COMMERCE  
OCCUPATIONAL AND PROFESSIONAL  
LICENSING  
HEBER M WELLS BLDG  
160 E 300 S  
SALT LAKE CITY, UT 84111-2316  
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:  
♦ W. Ray Walker by phone at 801-530-6256, by FAX at 801-530-6511, or by Internet E-mail at raywalker@utah.gov

AUTHORIZED BY: Mark Steinagel, Director

EFFECTIVE: 02/02/2012

Education, Administration  
**R277-705**  
Secondary School Completion and  
Diplomas

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT  
OF CONTINUATION**DAR FILE NO.: 35818  
FILED: 02/02/2012**NOTICE OF REVIEW AND STATEMENT OF  
CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: This rule is authorized by Subsections 53A-1-402(1)(b) and (c) which direct the Utah State Board of Education (Board) to make rules regarding competency levels, graduation requirements, curriculum, and instruction requirements, and by Subsection 53A-1-401(3) which allows the Board to adopt rules in accordance with its responsibilities.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comment has been received.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule continues to be necessary because state law requires the Board to adopt rules regarding competency levels, graduation requirements, curriculum, and instruction requirements and this rule provides standards and procedures required by state law. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

EDUCATION  
ADMINISTRATION  
250 E 500 S  
SALT LAKE CITY, UT 84111-3272  
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:  
♦ Carol Lear by phone at 801-538-7835, by FAX at 801-538-7768, or by Internet E-mail at carol.lear@schools.utah.gov

AUTHORIZED BY: Carol Lear, Director, School Law and Legislation

EFFECTIVE: 02/02/2012

Education, Administration  
**R277-915**  
 Work-based Learning Programs for  
 Interns

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT  
 OF CONTINUATION**

DAR FILE NO.: 35819  
 FILED: 02/02/2012

**NOTICE OF REVIEW AND STATEMENT OF  
 CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: This rule is authorized by Section 53A-29-102 that provides for a public or private school to offer internships in connection with work experience and career exploration programs operated under rules established by the Utah State Board of Education (Board) and Subsection 53A-1-401(3) which allows the Board to adopt rules in accordance with its responsibilities.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comment has been received.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule continues to be necessary because the Work-based Learning Programs for Interns still exists and is administered consistent with the standards and procedures of this rule. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

EDUCATION  
 ADMINISTRATION  
 250 E 500 S  
 SALT LAKE CITY, UT 84111-3272  
 or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:  
 ♦ Carol Lear by phone at 801-538-7835, by FAX at 801-538-7768, or by Internet E-mail at carol.lear@schools.utah.gov

AUTHORIZED BY: Carol Lear, Director, School Law and Legislation

EFFECTIVE: 02/02/2012

Health, Family Health and  
 Preparedness, WIC Services  
**R406-100**  
 Special Supplemental Nutrition  
 Program for Women, Infants and  
 Children

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT  
 OF CONTINUATION**

DAR FILE NO.: 35812  
 FILED: 02/02/2012

**NOTICE OF REVIEW AND STATEMENT OF  
 CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Section 26-1-15 authorizes the Executive Director of the Department of Health to accept federal funding to operate the Women, Infants, and Children (WIC) program in Utah. 7 CFR part 246 is the set of federal regulations under which the Utah WIC program operates, and these regulations require that Utah implement state specific policies to operate the program.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: Comments were requested from the Utah Association of WIC Administrators (UAWA), the WIC Advisory Council, and the health officers of the local health departments in regards to the five-year review of this rule. No comments favoring or opposing continuation of this rule were received.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule was reviewed and amended during 2011 and is current and accurate. This rule is needed to regulate the administration of the WIC program within the local health departments. This rule is also needed to outline how "high risk" status is determined for grocery retailers contracted to accept WIC checks. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

HEALTH  
 FAMILY HEALTH AND PREPAREDNESS,  
 WIC SERVICES  
 CANNON HEALTH BLDG  
 288 N 1460 W  
 SALT LAKE CITY, UT 84116-3231  
 or at the Division of Administrative Rules.

## DIRECT QUESTIONS REGARDING THIS RULE TO:

- ◆ Chris Furner by phone at 801-538-6199, by FAX at 801-538-6729, or by Internet E-mail at CFURNER@utah.gov
- ◆ Doug Springmeyer by phone at 801-538-6971, by FAX at 801-538-6306, or by Internet E-mail at dspringm@utah.gov
- ◆ Rick Wardle by phone at 801-538-6897, by FAX at 801-538-6729, or by Internet E-mail at rwardle@utah.gov

AUTHORIZED BY: David Patton, PhD, Executive Director

EFFECTIVE: 02/02/2012

**Health, Family Health and  
Preparedness, WIC Services  
R406-200  
Program Overview**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT  
OF CONTINUATION**

DAR FILE NO.: 35813  
FILED: 02/02/2012

**NOTICE OF REVIEW AND STATEMENT OF  
CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Section 26-1-15 authorizes the Executive Director of the Department of Health to accept federal funding to operate the Women, Infants, and Children (WIC) program in Utah. 7 CFR part 246 is the set of federal regulations under which the Utah WIC program operates, and these regulations require that Utah implement state specific policies to operate the program.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: Comments were requested from the Utah Association of WIC Administrators (UAWA), the WIC Advisory Council, and the health officers of the local health departments in regards to the five-year review of this rule. No comments favoring or opposing continuation of this rule were received.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule was reviewed and amended during 2011 and is current and accurate. This rule is needed to regulate the administration of the WIC program within the local health departments and outlines how public comments are accepted regarding the details of the WIC State Plan and the Policy and Procedures Manual. This rule also outlines how local grocery retailers under contract with the WIC

program can redeem WIC checks. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

HEALTH  
FAMILY HEALTH AND PREPAREDNESS,  
WIC SERVICES  
CANNON HEALTH BLDG  
288 N 1460 W  
SALT LAKE CITY, UT 84116-3231  
or at the Division of Administrative Rules.

## DIRECT QUESTIONS REGARDING THIS RULE TO:

- ◆ Chris Furner by phone at 801-538-6199, by FAX at 801-538-6729, or by Internet E-mail at CFURNER@utah.gov
- ◆ Doug Springmeyer by phone at 801-538-6971, by FAX at 801-538-6306, or by Internet E-mail at dspringm@utah.gov
- ◆ Rick Wardle by phone at 801-538-6897, by FAX at 801-538-6729, or by Internet E-mail at rwardle@utah.gov

AUTHORIZED BY: David Patton, PhD, Executive Director

EFFECTIVE: 02/02/2012

**Health, Family Health and  
Preparedness, WIC Services  
R406-201  
Outreach Program**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT  
OF CONTINUATION**

DAR FILE NO.: 35814  
FILED: 02/02/2012

**NOTICE OF REVIEW AND STATEMENT OF  
CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Section 26-1-15 authorizes the Executive Director of the Department of Health to accept federal funding to operate the Women, Infants, and Children (WIC) program in Utah. 7 CFR part 246 is the set of federal regulations under which the Utah WIC program operates, and these regulations require that Utah implement state specific policies to operate the program. Pub. L. No. 95-627 requires that the Utah State WIC Office in cooperation with participating local agencies publicize the availability of WIC program benefits to offices and organizations that deal with significant numbers of potentially eligible persons.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR

OPPOSING THE RULE: Comments were requested from the Utah Association of WIC Administrators (UAWA), the WIC Advisory Council, and the health officers of the local health departments in regards to the five-year review of this rule. No comments favoring or opposing continuation of this rule were received.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule was reviewed during 2011 and was found to be current and accurate. This rule is needed to regulate the administration of the WIC program within the local health departments. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

HEALTH  
FAMILY HEALTH AND PREPAREDNESS,  
WIC SERVICES  
CANNON HEALTH BLDG  
288 N 1460 W  
SALT LAKE CITY, UT 84116-3231  
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

- ◆ Chris Furner by phone at 801-538-6199, by FAX at 801-538-6729, or by Internet E-mail at CFURNER@utah.gov
- ◆ Doug Springmeyer by phone at 801-538-6971, by FAX at 801-538-6306, or by Internet E-mail at dspringm@utah.gov
- ◆ Rick Wardle by phone at 801-538-6897, by FAX at 801-538-6729, or by Internet E-mail at rwardle@utah.gov

AUTHORIZED BY: David Patton, PhD, Executive Director

EFFECTIVE: 02/02/2012

**Health, Family Health and Preparedness, WIC Services**

**R406-202**

**Eligibility**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

DAR FILE NO.: 35815  
FILED: 02/02/2012

**NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Section 26-1-15 authorizes the Executive Director of the Department of Health to accept

federal funding to operate the Women, Infants, and Children (WIC) program in Utah. 7 CFR part 246 is the set of federal regulations under which the Utah WIC program operates, and these regulations require that Utah implement state specific policies to operate the program.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: Comments were requested from the Utah Association of WIC Administrators (UAWA), the WIC Advisory Council, and the health officers of the local health departments in regards to the five-year review of this rule. No comments favoring or opposing continuation of this rule were received.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule was reviewed and amended during 2011 and is current and accurate. This rule is needed to regulate the administration of the WIC program within the local health departments. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

HEALTH  
FAMILY HEALTH AND PREPAREDNESS,  
WIC SERVICES  
CANNON HEALTH BLDG  
288 N 1460 W  
SALT LAKE CITY, UT 84116-3231  
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

- ◆ Chris Furner by phone at 801-538-6199, by FAX at 801-538-6729, or by Internet E-mail at CFURNER@utah.gov
- ◆ Rick Wardle by phone at 801-538-6897, by FAX at 801-538-6729, or by Internet E-mail at rwardle@utah.gov

AUTHORIZED BY: David Patton, PhD, Executive Director

EFFECTIVE: 02/02/2012

**Health, Family Health and Preparedness, WIC Services**

**R406-301**

**Clinic Guidelines**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

DAR FILE NO.: 35816  
FILED: 02/02/2012

**NOTICE OF REVIEW AND STATEMENT OF  
CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Section 26-1-15 authorizes the Executive Director of the Department of Health to accept federal funding to operate the Women, Infants, and Children (WIC) program in Utah. 7 CFR part 246 is the set of federal regulations under which the Utah WIC program operates, and these regulations require that Utah implement state specific policies to operate the program.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: Comments were requested from the Utah Association of WIC Administrators (UAWA), the WIC Advisory Council, and the health officers of the local health departments in regards to the five-year review of this rule. No comments favoring or opposing continuation of this rule were received.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule was reviewed during 2011 and was found to be current and accurate. This rule is needed to regulate the administration of the WIC program within the local health departments. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

HEALTH  
FAMILY HEALTH AND PREPAREDNESS,  
WIC SERVICES  
CANNON HEALTH BLDG  
288 N 1460 W  
SALT LAKE CITY, UT 84116-3231  
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Chris Furner by phone at 801-538-6199, by FAX at 801-538-6729, or by Internet E-mail at CFURNER@utah.gov  
♦ Doug Springmeyer by phone at 801-538-6971, by FAX at 801-538-6306, or by Internet E-mail at dspringm@utah.gov  
♦ Rick Wardle by phone at 801-538-6897, by FAX at 801-538-6729, or by Internet E-mail at rwardle@utah.gov

AUTHORIZED BY: David Patton, PhD, Executive Director

EFFECTIVE: 02/02/2012

Human Resource Management,  
Administration  
**R477-1**  
Definitions

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT  
OF CONTINUATION**

DAR FILE NO.: 35821  
FILED: 02/02/2012

**NOTICE OF REVIEW AND STATEMENT OF  
CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Subsection 67-19-6(1)(j) gives the Department of Human Resource Management (DHRM) authority to adopt rules for human resource management. The department has opted to use a format that places key definitions in a separate rule for quick reference.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: The Department of Administrative Services, Division of Risk Management, submitted a written comment suggesting clearer language, which was changed. Utah Public Employees Association expressed that several definitions contained unnecessary information. They also opposed the removal of several definitions and terms in 2010. These were removed because of redundancy. DHRM comments over the five-year period focused on reducing the number of definitions, to include many in the body of other rules. A few definitions were added to clarify new terms. Some changes to definitions reflected changes in laws.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: In order to assist the reader of DHRM rules in understanding key terms, especially technical terms, this rule is dedicated to definitions. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

HUMAN RESOURCE MANAGEMENT  
ADMINISTRATION  
ROOM 2120 STATE OFFICE BLDG  
450 N MAIN ST  
SALT LAKE CITY, UT 84114-1201  
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:  
 ♦ J.J. Acker by phone at 801-538-4297, by FAX at 801-538-3081, or by Internet E-mail at jacker@utah.gov

AUTHORIZED BY: Jeff Herring, Executive Director

EFFECTIVE: 02/02/2012

**Human Resource Management,  
 Administration  
 R477-2  
 Administration**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT  
 OF CONTINUATION**  
 DAR FILE NO.: 35822  
 FILED: 02/02/2012

**NOTICE OF REVIEW AND STATEMENT OF  
 CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: This rule of the Department of Human Resource Management (DHRM) governs applicability of rules, compliance, record-keeping and information, fair employment practice, personal service expenditures, and employment eligibility verification. Statutory authority for this rule is found in Subsection 63G-2-204(2)(d) wherein government entities are granted authority to write rules governing requests for information under the Government Records and Management Act, Title 63G, Chapter 2. Section 67-19-6 gives the department rulemaking authority for the human resource management system. Subsection 67-19-18(3) gives the department authority to write rules governing the procedural and documentary requirements for disciplinary matters.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: Comments over the past five years regarding this rule came from DHRM staff. Recommendations and resulting amendments reflected new legislation, federal laws, removal of redundant language and editing language for clarity.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule contains requirements for state compliance with federal laws governing discrimination and equal employment opportunity and Section 67-19-4; record-keeping for state employees under the Personnel Management Act in Subsections 67-19-18(5); articulates

policy regarding supervision of relatives in Section 52-3-1; and establishes rules for state personnel record keeping under the Government Records and Management Act in Title 63G, Chapter 2. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:  
 HUMAN RESOURCE MANAGEMENT  
 ADMINISTRATION  
 ROOM 2120 STATE OFFICE BLDG  
 450 N MAIN ST  
 SALT LAKE CITY, UT 84114-1201  
 or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:  
 ♦ J.J. Acker by phone at 801-538-4297, by FAX at 801-538-3081, or by Internet E-mail at jacker@utah.gov

AUTHORIZED BY: Jeff Herring, Executive Director

EFFECTIVE: 02/02/2012

**Human Resource Management,  
 Administration  
 R477-3  
 Classification**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT  
 OF CONTINUATION**  
 DAR FILE NO.: 35823  
 FILED: 02/02/2012

**NOTICE OF REVIEW AND STATEMENT OF  
 CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Subsection 67-19-12(3) charges the Department of Human Resource Management (DHRM) with responsibility for the maintenance of a state classification system. Section 67-19-31 provides for a classification grievance process. This rule is written under the broad rule making power granted in Section 67-19-6 to bring administrative and legal consistency to these two processes.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: Utah Public Employees' Association (UPEA) expressed concern over the discretionary authority given to DHRM and perceived discretion of agency management that might lead to employees being assigned duties, without increased compensation, that are within a higher job range by simply electing to forgo a classification review. The recommendation was to make classification

reviews mandatory. This was rejected because under code, DHRM determines whether classification reviews are required. Further, agency management does not have discretionary authority. UPEA also recommended some clarifying language in other areas of this rule, some of which was inserted.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Classification addresses a fundamental function of DHRM as found in Subsection 67-19-6(1). The classification system that this rule addresses cannot be delegated to another department. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:  
HUMAN RESOURCE MANAGEMENT  
ADMINISTRATION  
ROOM 2120 STATE OFFICE BLDG  
450 N MAIN ST  
SALT LAKE CITY, UT 84114-1201  
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:  
♦ J.J. Acker by phone at 801-538-4297, by FAX at 801-538-3081, or by Internet E-mail at jacker@utah.gov

AUTHORIZED BY: Jeff Herring, Executive Director

EFFECTIVE: 02/02/2012

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**Human Resource Management,  
Administration  
R477-4  
Filling Positions**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT  
OF CONTINUATION  
DAR FILE NO.: 35824  
FILED: 02/02/2012**

**NOTICE OF REVIEW AND STATEMENT OF  
CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: This rule is written under the broad grant of rulemaking authority given to the Department of Human Resource Management (DHRM) in Section 67-19-6. Specifically, this rule addresses the requirements in Sections 67-19-16 and 67-19-15.7 for DHRM to manage the process by which employees are recruited, hired and promoted and to do this by rule.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: Written comments were received from Utah Public Employees' Association (UPEA) requesting rehired employees to have forfeited sick leave in Program I reinstated if they were separated due to a reduction in force. UPEA requested a prescriptive order of priority in recruitment actions. UPEA requested to leave recruitment posting procedures, which were marked for deletion, in rule. UPEA requested that individuals who were subject to a reduction in force should be given preferential consideration before other applicants. The Department of Administrative Services, Division of Risk Management, expressed concern over the rule limiting reassignments to within agencies.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule is the foundation for the recruitment and selection procedures that implement the requirements of Section 67-19-16, generally accepted principles of merit and competitive recruitment practices, and case law. Therefore, this rule should be continued. DHRM did implement the reinstatement of Program I sick leave for RIFs rehires. UPEA's priority suggestion was not implemented because such an order would not apply universally. The posting procedures were deleted because they were business processes rather than rule. Preferential consideration was already in rule in another subsection, so UPEA's recommended language was not implemented.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:  
HUMAN RESOURCE MANAGEMENT  
ADMINISTRATION  
ROOM 2120 STATE OFFICE BLDG  
450 N MAIN ST  
SALT LAKE CITY, UT 84114-1201  
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:  
♦ J.J. Acker by phone at 801-538-4297, by FAX at 801-538-3081, or by Internet E-mail at jacker@utah.gov

AUTHORIZED BY: Jeff Herring, Executive Director

EFFECTIVE: 02/02/2012

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**Human Resource Management,  
Administration  
R477-5  
Employee Status and Probation**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT  
OF CONTINUATION**

DAR FILE NO.: 35825  
FILED: 02/02/2012

**NOTICE OF REVIEW AND STATEMENT OF  
CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Subsection 67-19-16(5) requires agency heads to make hires from hiring lists for probationary periods established by rule and for the Director of the Department of Human Resource Management (DHRM) to make rules establishing probationary periods.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: DHRM received comment from Utah Public Employees' Association (UPEA) on this rule. They requested language changes and clarifications they believed would preserve the spirit of competitive recruitment practices.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule implements the requirements of Section 67-19-16 regarding probationary periods. The probationary period is the final step in the selection process and the gateway to merit status. Therefore, this rule should be continued. Some of the language changes suggested by UPEA were implemented and others were determined unnecessary.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

HUMAN RESOURCE MANAGEMENT  
ADMINISTRATION  
ROOM 2120 STATE OFFICE BLDG  
450 N MAIN ST  
SALT LAKE CITY, UT 84114-1201  
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ J.J. Acker by phone at 801-538-4297, by FAX at 801-538-3081, or by Internet E-mail at [jacker@utah.gov](mailto:jacker@utah.gov)

AUTHORIZED BY: Jeff Herring, Executive Director

EFFECTIVE: 02/02/2012

Human Resource Management,  
Administration  
**R477-6**  
Compensation

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT  
OF CONTINUATION**

DAR FILE NO.: 35826  
FILED: 02/02/2012

**NOTICE OF REVIEW AND STATEMENT OF  
CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Section 67-19-12 requires the Department of Human Resource Management (DHRM) to work with the Governor to establish pay plans for each position in the classified service (Subsection 67-19-12(4)) and to issue rules for the administration of pay plans (Subsection 67-19-12(4)(c)(iii)). Section 67-19-12.5 defines the flexible benefit program authorized by the Internal Revenue Service and provides for DHRM to make rules for its administration.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: Utah Public Employees' Association (UPEA) requested deletion of a subsection permitting administrative adjustments for unusual circumstances, indicating it appeared to grant too much latitude. UPEA suggested adding an example to one subsection. UPEA requested language to require a bonus be paid to employees who would have received an administrative salary increase, but are not eligible.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Section 67-19-12 provides the legal basis for the state compensation system and requires that DHRM design pay plans and write rules to implement the section. Due to the critical nature of employee compensation for the state budget and for the employee, this rule is monitored closely by all interested parties and is perhaps the most researched of the DHRM rules. DHRM is very sensitive to the budgetary and legal implications when considering proposed changes. Therefore, this rule should be continued. UPEA's requested language was not implemented. After explaining possible circumstances for administrative adjustment, UPEA withdrew the deletion recommendation.

An example was not added to rule in keeping with the purpose and format established in administrative rules. DHRM did not implement mandatory bonuses because it would potentially encumber an agency and overstep what was authorized in code.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:  
 HUMAN RESOURCE MANAGEMENT  
 ADMINISTRATION  
 ROOM 2120 STATE OFFICE BLDG  
 450 N MAIN ST  
 SALT LAKE CITY, UT 84114-1201  
 or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:  
 ♦ J.J. Acker by phone at 801-538-4297, by FAX at 801-538-3081, or by Internet E-mail at jacker@utah.gov

AUTHORIZED BY: Jeff Herring, Executive Director

EFFECTIVE: 02/02/2012

**Human Resource Management,  
 Administration  
 R477-7  
 Leave**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT  
 OF CONTINUATION  
 DAR FILE NO.: 35827  
 FILED: 02/02/2012**

**NOTICE OF REVIEW AND STATEMENT OF  
 CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: This rule addresses numerous state and federal laws that require implementation through rule or clarification for administrative purposes. These include the federal Family Medical Leave Act (FMLA) and the regulations associated with it in 29 USC 2601, and the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA). Each of these acts require conformance by employers and provide for certain degrees of flexibility that must be addressed in rule. Numerous sections of the Utah Code must also be addressed in rule. These include: Title 34, Chapter 43, that provides for disaster service volunteer leave; Title 34A, Chapter 2, that provides the Workers' Compensation benefit for state employees; Section 39-3-1 that provides for time off for state employees for military purposes; Title 49, Chapter 21, that provides the Long Term Disability benefits for state employees; Section 63G-1-301 that provides for official state holidays; Section 67-

19-6 that provides broad rulemaking authority for the Department of Human Resource Management (DHRM) and is the legal provision for the annual leave, sick leave, jury leave, funeral leave, and furlough provisions; Section 67-19-12.7 and 12.9 that provides for annual leave conversion to the deferred compensation program; Section 67-19-14 through 14.4 that establishes the legal foundation for the converted sick leave and sick leave retirement programs; and Section 67-19-14.5 that provides for organ donor leave.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: Utah Public Employees' Association (UPEA) comments included: a request to strike reference to personal preference day; a recommendation to recognize disaster relief organizations beyond American Red Cross; request to include changes in one section in another for clarity; a request to include educational assistance as a reason for administrative leave; and a request to include language from one section of leave in another. The Utah Department of Administrative Services, Division of Risk Management, recommended new language for long term disability leave to eliminate the impression that a short return to work requires a new six-month period.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule sets parameters and limits on the granting of the various kinds of leave offered to employees. Some of the leave is defined in state code and some is defined in rule. Leave is considered a benefit and some, such as annual and holiday leave, are part of the employee compensation system and thus a property right. It is a well established legal precedent that benefits and compensation must be administered consistently or the employer is exposed to considerable liability. This rule is critical and necessary to the proper management of the state HR system as long as leave is offered to employees. Since this is part of employee compensation, cost is also an issue. This rule helps contain the cost of the leave benefit. Therefore, this rule should be continued. DHRM made the following responses to comments: reference to personal preference day was not removed because it is required in code. The recognition of disaster relief organizations was implemented; requested clarifying language was placed in rule; rather than listing educational assistance as a specific reason for administrative leave, DHRM granted broader latitude in accordance with agency policies; DHRM did not insert duplicate language into rule to avoid redundancy and unnecessary rule length. Recommendations from Division of Risk Management were implemented.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:  
 HUMAN RESOURCE MANAGEMENT  
 ADMINISTRATION  
 ROOM 2120 STATE OFFICE BLDG

450 N MAIN ST  
 SALT LAKE CITY, UT 84114-1201  
 or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:  
 ♦ J.J. Acker by phone at 801-538-4297, by FAX at 801-538-3081, or by Internet E-mail at jacker@utah.gov

AUTHORIZED BY: Jeff Herring, Executive Director

EFFECTIVE: 02/02/2012

**Human Resource Management,  
 Administration  
 R477-8  
 Working Conditions**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT  
 OF CONTINUATION**  
 DAR FILE NO.: 35828  
 FILED: 02/02/2012

**NOTICE OF REVIEW AND STATEMENT OF  
 CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: This rule addresses state and federal laws that require implementation through rule for clarification or administrative purposes. The Fair Labor Standards Act (FLSA) and the regulations associated with it in 29 CFR parts 500-899 (1996) require conformance by employers and provide for certain degrees of flexibility that must be addressed in rule. Section 67-19-6.7 defines overtime benefits for state employees in addition to the FLSA and requires rulemaking by the Department of Human Resource Management (DHRM). Section 67-19-6 provides broad rulemaking authority for DHRM and is the legal provision for all other sections of this rule.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: Utah Public Employees' Association (UPEA) requested to change involuntary work relocation from 50 miles to 30 miles. Department of Administrative Services, Division of Risk Management, recommended changes to temporary transitional assignments that would make the rule read more consistently with Risk management rules. Many state employees commented on a new rule regarding exercise release time. Several state employees commented on a new breast milk accommodation rule, requesting broader and more extensive provisions.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The FLSA provisions in this rule are essential to the proper management of the state's human resource management system. Without them, the state faces serious and costly legal liability. These include the subsections dealing with work period, lunch and breaks, and overtime. Other subsections are common but important provisions covering employee obligations to the state as the principle employer. Therefore, this rule should be continued. The recommendation to change relocation distance was not implemented because this references a Division of Finance rule (Section R25-6-3), which further is dependent upon IRS guidelines. Department of Administrative Services, Division of Risk Management, recommendations were implemented. The exercise release time rule was modified to assure reasonable practice and agency flexibility. Breast milk accommodations were not extended beyond the minimum requirements of federal law.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:  
 HUMAN RESOURCE MANAGEMENT  
 ADMINISTRATION  
 ROOM 2120 STATE OFFICE BLDG  
 450 N MAIN ST  
 SALT LAKE CITY, UT 84114-1201  
 or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:  
 ♦ J.J. Acker by phone at 801-538-4297, by FAX at 801-538-3081, or by Internet E-mail at jacker@utah.gov

AUTHORIZED BY: Jeff Herring, Executive Director

EFFECTIVE: 02/02/2012

**Human Resource Management,  
 Administration  
 R477-9  
 Employee Conduct**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT  
 OF CONTINUATION**  
 DAR FILE NO.: 35829  
 FILED: 02/02/2012

**NOTICE OF REVIEW AND STATEMENT OF  
 CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE

OR REQUIRE THE RULE: Title 67, Chapter 16, Utah Ethics Act, requires employees to notify management of potential conflicts in interest with employment with the State. Section 67-19-19 governs political activity of certain classes of state employees. The Department of Human Resource Management (DHRM) implements these requirements for the executive branch of state government via rulemaking authority granted by Section 67-19-6 which contains a general grant of rulemaking authority to DHRM to govern the human resource management system.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comments from outside of DHRM were received concerning this rule during the five-year period.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule contains important provisions governing general employee behavior on the job including conflicts of interest and the acceptable use of state resources. It also deals with provisions in the law governing employee behavior off the job such as political activity, second jobs, and social media. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:  
 HUMAN RESOURCE MANAGEMENT  
 ADMINISTRATION  
 ROOM 2120 STATE OFFICE BLDG  
 450 N MAIN ST  
 SALT LAKE CITY, UT 84114-1201  
 or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:  
 ♦ J.J. Acker by phone at 801-538-4297, by FAX at 801-538-3081, or by Internet E-mail at jacker@utah.gov

AUTHORIZED BY: Jeff Herring, Executive Director

EFFECTIVE: 02/02/2012

**Human Resource Management,  
 Administration  
 R477-10  
 Employee Development**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT  
 OF CONTINUATION**  
 DAR FILE NO.: 35830  
 FILED: 02/03/2012

**NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Section 67-19-6 contains a general grant of rulemaking authority for human resource management and a specific charge concerning training programs and who has authority for certain types of training. Section 67-19-12 governs pay plans and gives authority to the Department of Human Resource Management (DHRM) to write rules governing how employees receive advancements, including performance criteria, within the salary range.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: Utah Public Employees' Association (UPEA) submitted three comments on this rule. The first expressed concern over removal of the August 31 deadline for establishment of performance plans. The second suggested adding the frequency with which harassment prevention training is to occur. The third requested DHRM to establish a statewide rating scale for performance evaluations.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule sets parameters for agencies in conducting important development activities for employees including evaluation of their performance, performance improvement plans for employees whose performance is not up to standard, and training and educational assistance. Documentation of employee performance and agency attempts to help an employee improve performance are important records in measuring statewide productivity and serve a vital role in disciplinary proceedings and justification of employee salary increases. Performance Improvement Plans are an administrative device used early in the process of dealing with poor performance before applying more formal and legally defined procedures. Therefore, this rule should be continued. DHRM did not reinstate the August 31 deadline for performance plans, nor did they establish a statewide rating scale. These suggestions were not implemented in order to allow flexibility to agencies in establishing a performance cycle that best meets their business needs and processes. DHRM did establish that the scale and parameters for establishing deadlines so employees understand performance standards and expectations in advance of evaluation. DHRM did adopt UPEA's suggestion to include a frequency for harassment training in rule. This frequency coincides with risk management rules.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:  
 HUMAN RESOURCE MANAGEMENT  
 ADMINISTRATION

ROOM 2120 STATE OFFICE BLDG  
 450 N MAIN ST  
 SALT LAKE CITY, UT 84114-1201  
 or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:  
 ♦ J.J. Acker by phone at 801-538-4297, by FAX at 801-538-3081, or by Internet E-mail at jacker@utah.gov

AUTHORIZED BY: Jeff Herring, Executive Director

EFFECTIVE: 02/03/2012

**Human Resource Management,  
 Administration  
 R477-11  
 Discipline**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT  
 OF CONTINUATION**  
 DAR FILE NO.: 35831  
 FILED: 02/03/2012

**NOTICE OF REVIEW AND STATEMENT OF  
 CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Section 67-19-18 requires that the Department of Human Resource Management (DHRM) write rules governing disciplinary processes.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: The Utah Office of the Attorney General suggested addition of language that would release agency heads from being bound by consistency of disciplinary decisions made prior to their administration. Utah Public Employees' Association (UPEA) suggested removal of language they felt was redundant.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule fulfills DHRM's responsibility to write rules governing the disciplinary process, Subsection 67-19-18(2). This is an important and technical part of the due process protections afforded to employees by the career service system. Failure to set statewide standards leaves the state open to serious liability. Therefore, this rule should be continued. The language recommended by the Utah Office of the Attorney General was implemented. The language reported as redundant was not removed as it was deemed to have clarifying value.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:  
 HUMAN RESOURCE MANAGEMENT  
 ADMINISTRATION  
 ROOM 2120 STATE OFFICE BLDG  
 450 N MAIN ST  
 SALT LAKE CITY, UT 84114-1201  
 or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:  
 ♦ J.J. Acker by phone at 801-538-4297, by FAX at 801-538-3081, or by Internet E-mail at jacker@utah.gov

AUTHORIZED BY: Jeff Herring, Executive Director

EFFECTIVE: 02/03/2012

**Human Resource Management,  
 Administration  
 R477-12  
 Separations**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT  
 OF CONTINUATION**  
 DAR FILE NO.: 35832  
 FILED: 02/03/2012

**NOTICE OF REVIEW AND STATEMENT OF  
 CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: This rule is written under the general rulemaking authority granted to the Department of Human Resource Management (DHRM) in Section 67-19-6. This rule establishes procedures by which an employee is separated from state employment and thus contains important legal protections for employees and the state.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: The Utah Public Employees' Association (UPEA) requested that the state adopt a bumping process when administering a reduction in force. UPEA opposed language that placed performance proficiency as the primary factor in determining retention points for reductions in force (RIF) on account of its perceived arbitrary nature. They also opposed language requiring a RIF'd individual to request preferential consideration when applying for a career service position.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY

DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Separation from employment is a major event for an employee and one that is frequently contested if forced by the employer. As a result, a great deal of precedent has been established by the courts, especially for government merit systems. This rule addresses all the pertinent issues in order to protect both the employee's rights and the state's discretion to terminate. Therefore, this rule should be continued. DHRM did not implement the mandatory "bumping" request because it is cumbersome, difficult to administer, and not required by code. DHRM clarified that proficiency factors are stipulated in rule as the past three years of performance reviews to prevent arbitrary decisions. DHRM did not adopt a mandatory preference system as there have been specific instances where an employee did not want to invoke this privilege. Leaving the language allows the employee flexibility.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:  
HUMAN RESOURCE MANAGEMENT  
ADMINISTRATION  
ROOM 2120 STATE OFFICE BLDG  
450 N MAIN ST  
SALT LAKE CITY, UT 84114-1201  
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:  
♦ J.J. Acker by phone at 801-538-4297, by FAX at 801-538-3081, or by Internet E-mail at jacker@utah.gov

AUTHORIZED BY: Jeff Herring, Executive Director

EFFECTIVE: 02/03/2012

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**Human Resource Management,  
Administration  
R477-13  
Volunteer Programs**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT  
OF CONTINUATION  
DAR FILE NO.: 35834  
FILED: 02/03/2012**

**NOTICE OF REVIEW AND STATEMENT OF  
CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Section 67-20-8 requires the Department of Human Resource Management (DHRM) to establish a volunteer program for the state.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comments were received in the previous five-year period regarding this rule.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule is required by Section 67-20-8. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:  
HUMAN RESOURCE MANAGEMENT  
ADMINISTRATION  
ROOM 2120 STATE OFFICE BLDG  
450 N MAIN ST  
SALT LAKE CITY, UT 84114-1201  
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:  
♦ J.J. Acker by phone at 801-538-4297, by FAX at 801-538-3081, or by Internet E-mail at jacker@utah.gov

AUTHORIZED BY: Jeff Herring, Executive Director

EFFECTIVE: 02/03/2012

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**Human Resource Management,  
Administration  
R477-15**

**Workplace Harassment Prevention  
Policy and Procedure**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT  
OF CONTINUATION  
DAR FILE NO.: 35835  
FILED: 02/03/2012**

**NOTICE OF REVIEW AND STATEMENT OF  
CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: This rule is written under the general grant of rulemaking authority given to the Department of Human Resource Management (DHRM) in Section 67-19-6.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR

OPPOSING THE RULE: No comments were received on this rule during the five-year period of this review.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule was written to address legal liability the state faces concerning workplace discrimination and harassment. This is an important rule that protects employees from harassing behavior and protects the state from costly legal action. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:  
 HUMAN RESOURCE MANAGEMENT  
 ADMINISTRATION  
 ROOM 2120 STATE OFFICE BLDG  
 450 N MAIN ST  
 SALT LAKE CITY, UT 84114-1201  
 or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:  
 ♦ J.J. Acker by phone at 801-538-4297, by FAX at 801-538-3081, or by Internet E-mail at jacker@utah.gov

AUTHORIZED BY: Jeff Herring, Executive Director

EFFECTIVE: 02/03/2012

**Insurance, Administration**  
**R590-116**  
**Valuation of Assets**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**  
 DAR FILE NO.: 35850  
 FILED: 02/06/2012

**NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Subsection 31A-2-201 authorizes the commissioner to write rules to implement the provisions of the insurance code. Subsection 31A-17-401(3)(a)(ii) allows the commissioner to write a rule to determine the present value of future income derived from securities owned by an insurer. Subsection 31A-17-401(4) requires the commissioner to adopt rules to implement the provisions of Section 31A-17-401, Valuation and Reserves. Section R590-116-4 of the rule sets standards for the valuation of an insurer's assets and securities.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: The department has not received any written comments regarding this rule in the past five years.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule sets a standard for all insurers doing business in Utah to use in determining the value of their assets. The rule helps the department to assess the financial health of each licensed insurer in their effort to protect the financial security of their insureds. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:  
 INSURANCE  
 ADMINISTRATION  
 ROOM 3110 STATE OFFICE BLDG  
 450 N MAIN ST  
 SALT LAKE CITY, UT 84114-1201  
 or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:  
 ♦ Jilene Whitby by phone at 801-538-3803, by FAX at 801-538-3829, or by Internet E-mail at jwhitby@utah.gov

AUTHORIZED BY: Jilene Whitby, Information Specialist

EFFECTIVE: 02/06/2012

**Insurance, Administration**  
**R590-117**  
**Valuation of Liabilities**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**  
 DAR FILE NO.: 35851  
 FILED: 02/06/2012

**NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Subsection 31A-2-201(3) authorizes rules to implement the Insurance Code. Section 31A-17-402 requires the commissioner to adopt a rule specifying which liabilities shall be reported by insurers and the methods for evaluating these assets. Section R590-117-4 of the rule states the liabilities that are to be listed on the

insurer's financial statement and also the methods by which these liabilities are to be valued.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comments have been received over the past five years regarding this rule.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule standardizes those liabilities that should be listed on an insurer's annual statement, as well as how they are to be valued. It is important that the liabilities of all licensed insurers in Utah be evaluated by the same standard for fairness. Knowing the true value of an insurer's liabilities is one way the department has in determining the insurer's financial health. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

INSURANCE  
ADMINISTRATION  
ROOM 3110 STATE OFFICE BLDG  
450 N MAIN ST  
SALT LAKE CITY, UT 84114-1201  
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:  
♦ Jilene Whitby by phone at 801-538-3803, by FAX at 801-538-3829, or by Internet E-mail at [jwhitby@utah.gov](mailto:jwhitby@utah.gov)

AUTHORIZED BY: Jilene Whitby, Information Specialist

EFFECTIVE: 02/06/2012

Natural Resources; Oil, Gas and  
Mining; Coal  
**R645-202**

Coal Exploration: Compliance Duties

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT  
OF CONTINUATION**

DAR FILE NO.: 35836  
FILED: 02/03/2012

**NOTICE OF REVIEW AND STATEMENT OF  
CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Sections 40-10-6 and 40-10-6.5 provide for rulemaking authority to the Board of Oil, Gas and

Mining as necessary for the regulation of coal mining operations and reclamation operations. Section 40-10-8 specifically establishes provisions for coal exploration rules.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comments have been received.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule establishes standards that are necessary for required documents to be available and for performance standards pertaining to the coal exploration. This rule should be continued so Utah's Coal Program continues to retain primacy under the federal Surface Mining Control and Reclamation Act.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

NATURAL RESOURCES  
OIL, GAS AND MINING; COAL  
ROOM 1210  
1594 W NORTH TEMPLE  
SALT LAKE CITY, UT 84116-3154  
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:  
♦ Steve Schneider by phone at 801-538-5328, by FAX at 801-359-3940, or by Internet E-mail at [steveschneider@utah.gov](mailto:steveschneider@utah.gov)

AUTHORIZED BY: John Baza, Director

EFFECTIVE: 02/03/2012

Natural Resources; Oil, Gas and  
Mining; Coal  
**R645-203**

Coal Exploration: Public Availability of  
Information

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT  
OF CONTINUATION**

DAR FILE NO.: 35837  
FILED: 02/03/2012

**NOTICE OF REVIEW AND STATEMENT OF  
CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Sections 40-10-6 and 40-10-6.5

provide for rulemaking authority to the Board of Oil, Gas and Mining as necessary for the regulation of coal mining operations and reclamation operations. Section 40-10-8 specifically establishes provisions for coal exploration rules. Section 40-10-19 also specifically establishes provisions for records obtained under the chapter to be made available to the public.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comments have been received.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule establishes standards that are necessary for availability of public records and confidentiality pertaining to coal exploration. This rule should be continued so Utah's Coal Program continues to retain primacy under the federal Surface Mining Control and Reclamation Act.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

NATURAL RESOURCES  
OIL, GAS AND MINING; COAL  
ROOM 1210  
1594 W NORTH TEMPLE  
SALT LAKE CITY, UT 84116-3154  
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:  
♦ Steve Schneider by phone at 801-538-5328, by FAX at 801-359-3940, or by Internet E-mail at steveschneider@utah.gov

AUTHORIZED BY: John Baza, Director

EFFECTIVE: 02/03/2012

**Natural Resources; Oil, Gas and Mining; Coal  
R645-300**

**Coal Mine Permitting: Administrative Procedures**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**  
DAR FILE NO.: 35838  
FILED: 02/03/2012

**NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS

ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Sections 40-10-6 and 40-10-6.5 provide for rulemaking authority to the Board of Oil, Gas and Mining as necessary for the regulation of coal mining operations and reclamation operations. Sections 40-10-9 and 40-10-10 specifically establish provisions for permitting of coal mining operations within the state.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comments have been received.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule establishes the administrative procedures that are necessary for permitting of coal mines including public participation, approval of permit applications, and administrative and judicial review of decisions on permits. This rule should be continued so Utah's Coal Program continues to retain primacy under the federal Surface Mining Control and Reclamation Act.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

NATURAL RESOURCES  
OIL, GAS AND MINING; COAL  
ROOM 1210  
1594 W NORTH TEMPLE  
SALT LAKE CITY, UT 84116-3154  
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:  
♦ Steve Schneider by phone at 801-538-5328, by FAX at 801-359-3940, or by Internet E-mail at steveschneider@utah.gov

AUTHORIZED BY: John Baza, Director

EFFECTIVE: 02/03/2012

**Natural Resources; Oil, Gas and Mining; Coal  
R645-301**

**Coal Mine Permitting: Permit Application Requirements**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**  
DAR FILE NO.: 35839  
FILED: 02/03/2012

**NOTICE OF REVIEW AND STATEMENT OF  
CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Sections 40-10-6 and 40-10-6.5 provide for rulemaking authority to the Board of Oil, Gas and Mining as necessary for the regulation of coal mining operations and reclamation operations. Sections 40-10-9 and 40-10-10 specifically establish provisions for permitting of coal mining operations within the state.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comments have been received.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule is necessary since it states the required information to be reflected in each permit application by a coal mine operator including information on soils, biology, engineering, geology, hydrology, and bonding. This rule should be continued so Utah's Coal Program continues to retain primacy under the federal Surface Mining Control and Reclamation Act.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

NATURAL RESOURCES  
OIL, GAS AND MINING; COAL  
ROOM 1210  
1594 W NORTH TEMPLE  
SALT LAKE CITY, UT 84116-3154  
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:  
♦ Steve Schneider by phone at 801-538-5328, by FAX at 801-359-3940, or by Internet E-mail at steveschneider@utah.gov

AUTHORIZED BY: John Baza, Director

EFFECTIVE: 02/03/2012

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**Natural Resources; Oil, Gas and  
Mining; Coal  
R645-302  
Coal Mine Permitting: Special  
Categories and Areas of Mining**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT  
OF CONTINUATION**

DAR FILE NO.: 35840  
FILED: 02/03/2012

**NOTICE OF REVIEW AND STATEMENT OF  
CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Sections 40-10-6 and 40-10-6.5 provide for rulemaking authority to the Board of Oil, Gas and Mining as necessary for the regulation of coal mining operations and reclamation operations. Sections 40-10-9 and 40-10-10 specifically establish provisions for permitting of coal mining operations within the state. Section 40-10-17 also specifically establishes provisions for performance standards for coal mining and reclamation, as well as rulemaking authority to govern the granting of variances.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comments have been received.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule establishes standards that are necessary for special categories of mining such as steep slopes and experimental practices mining, and special areas of mining such as prime farmland and alluvial valley floors. This rule should be continued so Utah's Coal Program continues to retain primacy under the federal Surface Mining Control and Reclamation Act.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

NATURAL RESOURCES  
OIL, GAS AND MINING; COAL  
ROOM 1210  
1594 W NORTH TEMPLE  
SALT LAKE CITY, UT 84116-3154  
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:  
♦ Steve Schneider by phone at 801-538-5328, by FAX at 801-359-3940, or by Internet E-mail at steveschneider@utah.gov

AUTHORIZED BY: John Baza, Director

EFFECTIVE: 02/03/2012

**Natural Resources; Oil, Gas and Mining; Coal  
R645-303**

**Coal Mine Permitting: Change, Renewal, and Transfer, Assignment, or Sale of Permit Rights**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

DAR FILE NO.: 35841  
FILED: 02/03/2012

**NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Sections 40-10-6 and 40-10-6.5 provide for rulemaking authority to the Board of Oil, Gas and Mining as necessary for the regulation of coal mining operations and reclamation operations. Sections 40-10-9 and 40-10-12 specifically establish provisions for permit renewal as well as permit revision and transfer, assignment, or sale of the rights granted under the permit.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comments have been received.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule establishes procedures that are necessary for coal mine permit renewals and changes, as well as transfer, assignment, or sale of permit rights. This rule should be continued so Utah's Coal Program continues to retain primacy under the federal Surface Mining Control and Reclamation Act.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

NATURAL RESOURCES  
OIL, GAS AND MINING; COAL  
ROOM 1210  
1594 W NORTH TEMPLE  
SALT LAKE CITY, UT 84116-3154  
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:  
♦ Steve Schneider by phone at 801-538-5328, by FAX at 801-359-3940, or by Internet E-mail at steveschneider@utah.gov

AUTHORIZED BY: John Baza, Director

EFFECTIVE: 02/03/2012

**Natural Resources; Oil, Gas and Mining; Coal  
R645-402**

**Inspection and Enforcement: Individual Civil Penalties**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

DAR FILE NO.: 35842  
FILED: 02/03/2012

**NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Sections 40-10-6 and 40-10-6.5 provide for rulemaking authority to the Board of Oil, Gas and Mining as necessary for the regulation of coal mining operations and reclamation operations. Subsection 40-10-20(6) specifically establishes provisions for civil penalties for a director, officer, or agent of a corporation who knowingly authorizes a violation of a condition of a coal mining permit.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comments have been received.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule establishes standards and procedures that are necessary for individual civil penalties against any corporate director, officer, or agent of a corporate permittee who knowingly authorizes a permit violation. This rule should be continued so Utah's Coal Program continues to retain primacy under the federal Surface Mining Control and Reclamation Act.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

NATURAL RESOURCES  
OIL, GAS AND MINING; COAL  
ROOM 1210  
1594 W NORTH TEMPLE  
SALT LAKE CITY, UT 84116-3154  
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:  
 ♦ Steve Schneider by phone at 801-538-5328, by FAX at 801-359-3940, or by Internet E-mail at steveschneider@utah.gov

AUTHORIZED BY: John Baza, Director

EFFECTIVE: 02/03/2012

Natural Resources; Oil, Gas and  
 Mining; Oil and Gas  
**R649-1**  
 Oil and Gas General Rules

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT  
 OF CONTINUATION**

DAR FILE NO.: 35843  
 FILED: 02/03/2012

**NOTICE OF REVIEW AND STATEMENT OF  
 CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Section 40-6-5 provides for rulemaking authority to the Board of Oil, Gas and Mining and provides the Board with the authority to regulate all operations related to the production of oil and gas and the disposal of salt water and oil field wastes. The definitions in this rule are utilized for consistent regulation.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comments have been received.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The definitions in this rule are necessary to avoid inconsistent use of terminology by the board, division, industry, and other affected parties. Therefore, this rule should be continued. There are no comments in opposition to this rule.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

NATURAL RESOURCES  
 OIL, GAS AND MINING; OIL AND GAS  
 ROOM 1210  
 1594 W NORTH TEMPLE  
 SALT LAKE CITY, UT 84116-3154  
 or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:  
 ♦ Steve Schneider by phone at 801-538-5328, by FAX at 801-359-3940, or by Internet E-mail at steveschneider@utah.gov

AUTHORIZED BY: John Baza, Director

EFFECTIVE: 02/03/2012

Natural Resources; Oil, Gas and  
 Mining; Oil and Gas  
**R649-2**  
 General Rules

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT  
 OF CONTINUATION**

DAR FILE NO.: 35845  
 FILED: 02/03/2012

**NOTICE OF REVIEW AND STATEMENT OF  
 CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Section 40-6-5 provides for rulemaking authority to the Board of Oil, Gas and Mining and provides the Board with the authority to regulate all operations related to the production of oil and gas and the disposal of salt water and oil field wastes. This rule covers the authorities granted to the division by the Board of Oil, Gas and Mining, and the scope of Title R649 and its rules.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comments have been received.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule is necessary to specify the authority and scope of the division's responsibilities provided for in Title 40, Chapter 6, et seq. It also provides a framework for day to day operations including inspections, record access, and production measurement. Therefore, this rule should be continued. There is no opposition to this rule.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

NATURAL RESOURCES  
 OIL, GAS AND MINING; OIL AND GAS  
 ROOM 1210  
 1594 W NORTH TEMPLE  
 SALT LAKE CITY, UT 84116-3154  
 or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:  
 ♦ Steve Schneider by phone at 801-538-5328, by FAX at 801-359-3940, or by Internet E-mail at steveschneider@utah.gov

AUTHORIZED BY: John Baza, Director

EFFECTIVE: 02/03/2012

DIRECT QUESTIONS REGARDING THIS RULE TO:  
 ♦ Steve Schneider by phone at 801-538-5328, by FAX at 801-359-3940, or by Internet E-mail at steveschneider@utah.gov

AUTHORIZED BY: John Baza, Director

EFFECTIVE: 02/03/2012

Natural Resources; Oil, Gas and Mining; Oil and Gas

**R649-3**

Drilling and Operating Practices

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

DAR FILE NO.: 35846  
 FILED: 02/03/2012

**NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Section 40-6-5 provides for rulemaking authority to the Board of Oil, Gas and Mining and provides the Board with the authority to regulate all operations related to the production of oil and gas and the disposal of salt water and oil field wastes.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comments have been received.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Without this rule, the division would not have the ability to issue permits, review operations, and function in the arena of regulating oil and gas drilling and operations in the state. Therefore, this rule should be continued. There is no opposition to the renewal of this rule.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

NATURAL RESOURCES  
 OIL, GAS AND MINING; OIL AND GAS  
 ROOM 1210  
 1594 W NORTH TEMPLE  
 SALT LAKE CITY, UT 84116-3154  
 or at the Division of Administrative Rules.

Natural Resources; Oil, Gas and Mining; Oil and Gas

**R649-5**

Underground Injection Control of Recovery Operations and Class II Injection Wells

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

DAR FILE NO.: 35847  
 FILED: 02/03/2012

**NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Section 40-6-5 provides for rulemaking authority to the Board of Oil, Gas and Mining and provides the Board with the authority to regulate all operations related to the production of oil and gas and the disposal of salt water and oil field wastes. Subsection 40-6-5(5) specifically provides the board with exclusive jurisdiction over class II injection wells as defined by the federal Environmental Protection Agency.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comments have been received.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Without this rule, the numerous injection wells used for waste disposal and reservoir pressure maintenance would fall under federal authority. This rule allows the division to assume primacy for injection operations. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

NATURAL RESOURCES  
 OIL, GAS AND MINING; OIL AND GAS  
 ROOM 1210

1594 W NORTH TEMPLE  
SALT LAKE CITY, UT 84116-3154  
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:  
♦ Steve Schneider by phone at 801-538-5328, by FAX at 801-359-3940, or by Internet E-mail at steveschneider@utah.gov

AUTHORIZED BY: John Baza, Director

EFFECTIVE: 02/03/2012

**Natural Resources; Oil, Gas and  
Mining; Oil and Gas  
R649-8  
Reporting and Report Forms**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT  
OF CONTINUATION**  
DAR FILE NO.: 35848  
FILED: 02/03/2012

**NOTICE OF REVIEW AND STATEMENT OF  
CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Section 40-6-5 provides for rulemaking authority to the Board of Oil, Gas and Mining and provides the Board with the authority to regulate all operations related to the production of oil and gas and the disposal of salt water and oil field wastes. This statute authorizes the board to adopt rules for reporting and the division is the repository for these records.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comments have been received.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule is necessary for the division to carry out the requirement to collect appropriate information from parties in the oil and gas industry and then make available to the public. This rule is necessary for consistency in data collection and data publication. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:  
NATURAL RESOURCES  
OIL, GAS AND MINING; OIL AND GAS

ROOM 1210  
1594 W NORTH TEMPLE  
SALT LAKE CITY, UT 84116-3154  
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:  
♦ Steve Schneider by phone at 801-538-5328, by FAX at 801-359-3940, or by Internet E-mail at steveschneider@utah.gov

AUTHORIZED BY: John Baza, Director

EFFECTIVE: 02/03/2012

**Natural Resources; Oil, Gas and  
Mining; Oil and Gas  
R649-9  
Waste Management and Disposal**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT  
OF CONTINUATION**  
DAR FILE NO.: 35849  
FILED: 02/03/2012

**NOTICE OF REVIEW AND STATEMENT OF  
CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Section 40-6-5 provides for rulemaking authority to the Board of Oil, Gas and Mining and provides the Board with the authority to regulate all operations related to the production of oil and gas and the disposal of salt water and oil field wastes.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comments have been received.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Without this rule, the state would not have a mechanism to manage the wastes generated in the process of exploration and production of petroleum hydrocarbons in the state. This rule and the board authority extended to the division are the means for proper disposal and handling of these wastes to protect the public. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:  
NATURAL RESOURCES  
OIL, GAS AND MINING; OIL AND GAS

ROOM 1210  
1594 W NORTH TEMPLE  
SALT LAKE CITY, UT 84116-3154  
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:  
◆ Steve Schneider by phone at 801-538-5328, by FAX at 801-359-3940, or by Internet E-mail at steveschneider@utah.gov

AUTHORIZED BY: John Baza, Director

EFFECTIVE: 02/03/2012

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written public comments was received in reference to this rule.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The statutory charge of the division remains unchanged. Testing of drivers prior to licensing is vital to upholding a safety standard. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:  
PUBLIC SAFETY  
DRIVER LICENSE  
CALVIN L RAMPTON COMPLEX  
4501 S 2700 W 3RD FL  
SALT LAKE CITY, UT 84119-5595  
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:  
◆ Marge Dalton by phone at 801-965-4456, by FAX at 801-957-8502, or by Internet E-mail at modalton@utah.gov

AUTHORIZED BY: Lance Davenport, Commissioner

EFFECTIVE: 02/06/2012

**Public Safety, Driver License  
R708-39**

**Physical and Mental Fitness Testing**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT  
OF CONTINUATION  
DAR FILE NO.: 35854  
FILED: 02/06/2012**

**NOTICE OF REVIEW AND STATEMENT OF  
CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Section 53-3-206 mandates the statutory obligation of the division to test applicants for a driver license.

**End of the Five-Year Notices of Review and Statements of Continuation Section**

## NOTICES OF FIVE-YEAR EXPIRATIONS

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Rulewriting agencies are required by law to review each of their administrative rules within five years of the date of the rule's original enactment or the date of last review (Section 63G-3-305). If the agency finds that it will not meet the deadline for review of the rule (the five-year anniversary date), it may file an extension with the Division of Administrative Rules (Division). However, if the agency fails to file either the review or the extension by the five-year anniversary date of the rule, the rule expires.

Upon expiration of the rule, the Division is required to remove the rule from the *Utah Administrative Code*. The agency may no longer enforce the rule, and it must follow regular rulemaking procedures to replace the rule if necessary.

The rules listed below were *not* reviewed in accordance with Section 63G-3-305. These rules have expired and have been removed from the *Utah Administrative Code*.

The expiration of administrative rules for failure to comply with the five-year review requirement is governed by Subsection 63G-3-305(8).

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Public Lands Policy Coordinating  
Office, Administration  
**R694-1**  
Archeological Permits

**FIVE-YEAR REVIEW EXPIRATION**

DAR FILE NO.: 35861

FILED: 02/08/2012

SUMMARY: The editor who publishes the Administrative Code emailed us to inquire about why the extension was filed on this rule for the five-year review on 06/23/2011 but there was no record of five-year review being filed. After doing some research, DAR discovered that the five-year review deadline for the extension was 10/21/2011 and the five-year review had not been filed. The rule expired on 10/22/2011 but DAR missed it. (DAR NOTE: A proposed new Rule R694-1 is under DAR No. 35874 in this issue, March 1, 2012, of the Bulletin.)

EFFECTIVE: 10/22/2012

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**End of the Notices of Notices of Five Year Expirations Section**



## NOTICES OF RULE EFFECTIVE DATES

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State law provides for agencies to make their rules effective and enforceable after publication in the Utah State Bulletin. In the case of Proposed Rules or Changes in Proposed Rules with a designated comment period, the law permits an agency to file a notice of effective date any time after the close of comment plus seven days. In the case of Changes in Proposed Rules with no designated comment period, the law permits an agency to file a notice of effective date on any date including or after the thirtieth day after the rule's publication date. If an agency fails to file a Notice of Effective Date within 120 days from the publication of a Proposed Rule or a related Change in Proposed Rule the rule lapses and the agency must start the rulemaking process over.

Notices of Effective Date are governed by Subsection 63G-3-301(12), 63G-3-303, and Sections R15-4-5a and 5b.

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### Abbreviations

AMD = Amendment

CPR = Change in Proposed Rule

NEW = New Rule

R&R = Repeal & Reenact

REP = Repeal

### Education

#### Administration

No. 35534 (R&R): R277-102. Adjudicative Proceedings

Published: 01/01/2012

Effective: 02/07/2012

No. 35535 (AMD): R277-425. Budgeting, Accounting, and Auditing for Utah School Districts

Published: 01/01/2012

Effective: 02/07/2012

No. 35536 (AMD): R277-426. Definition of Private and Non-Profit Schools for Federal Program Services

Published: 01/01/2012

Effective: 02/07/2012

No. 35537 (AMD): R277-703. Centennial Scholarship for Early Graduation

Published: 01/01/2012

Effective: 02/07/2012

No. 35538 (REP): R277-730. Alternative High School Curriculum

Published: 01/01/2012

Effective: 02/07/2012

No. 35539 (AMD): R277-751. Special Education Extended School Year

Published: 01/01/2012

Effective: 02/07/2012

### Environmental Quality

#### Air Quality

No. 35413 (AMD): R307-405. Permits: Major Sources in Attainment or Unclassified Areas (PSD)

Published: 12/01/2011

Effective: 02/02/2012

### Examiners (Board of)

#### Administration

No. 35497 (NEW): R320-101. Procedures for Electronic Meetings

Published: 12/15/2011

Effective: 02/10/2012

### Health

#### Health Care Financing, Coverage and Reimbursement Policy

No. 35437 (AMD): R414-305. Resources

Published: 12/01/2011

Effective: 02/06/2012

No. 35441 (AMD): R414-308. Application, Eligibility Determinations and Improper Medical Assistance

Published: 12/01/2011

Effective: 02/06/2012

#### Family Health and Preparedness, Licensing

No. 35459 (AMD): R432-4. General Construction

Published: 12/15/2011

Effective: 02/21/2012

No. 35460 (AMD): R432-5. Nursing Facility Construction

Published: 12/15/2011

Effective: 02/21/2012

No. 35461 (AMD): R432-6. Assisted Living Facility General Construction

Published: 12/15/2011

Effective: 02/21/2012

No. 35462 (AMD): R432-7. Specialty Hospital -- Psychiatric Hospital Construction

Published: 12/15/2011

Effective: 02/21/2012

No. 35463 (AMD): R432-8. Specialty Hospital - Chemical Dependency/Substance Abuse Construction

Published: 12/15/2011

Effective: 02/21/2012

No. 35464 (AMD): R432-9. Specialty Hospital - Rehabilitation Construction Rule  
 Published: 12/15/2011  
 Effective: 02/21/2012

No. 35465 (AMD): R432-10. Specialty Hospital -- Long-Term Acute Care Construction Rule  
 Published: 12/15/2011  
 Effective: 02/21/2012

No. 35466 (AMD): R432-11. Orthopedic Hospital Construction  
 Published: 12/15/2011  
 Effective: 02/21/2012

No. 35467 (AMD): R432-12. Small Health Care Facility (Four to Sixteen Beds) Construction Rule  
 Published: 12/15/2011  
 Effective: 02/21/2012

No. 35468 (AMD): R432-13. Freestanding Ambulatory Surgical Center Construction Rule  
 Published: 12/15/2011  
 Effective: 02/21/2012

No. 35469 (AMD): R432-14. Birthing Center Construction Rule  
 Published: 12/15/2011  
 Effective: 02/21/2012

No. 35470 (AMD): R432-16. Hospice Inpatient Facility Construction  
 Published: 12/15/2011  
 Effective: 02/21/2012

No. 35471 (AMD): R432-100. General Hospital Standards  
 Published: 12/15/2011  
 Effective: 02/21/2012

No. 35500 (AMD): R432-100. General Hospital Standards  
 Published: 12/15/2011  
 Effective: 02/08/2012

No. 35499 (AMD): R432-270-6. Administrator Qualifications  
 Published: 12/15/2011  
 Effective: 02/08/2012

No. 35472 (AMD): R432-650. End Stage Renal Disease Facility Rules  
 Published: 12/15/2011  
 Effective: 02/21/2012

Insurance  
 Administration  
 No. 35543 (AMD): R590-142. Continuing Education Rule  
 Published: 01/01/2012  
 Effective: 02/08/2012

Natural Resources  
 Wildlife Resources  
 No. 35520 (AMD): R657-5. Taking Big Game  
 Published: 01/01/2012  
 Effective: 02/07/2012

Public Service Commission  
 Administration  
 No. 35508 (AMD): R746-100. Practice and Procedures Governing Formal Hearings  
 Published: 01/01/2012  
 Effective: 02/07/2012

No. 35505 (AMD): R746-310-1. General Provisions  
 Published: 01/01/2012  
 Effective: 02/07/2012

No. 35509 (REP): R746-342. Rule on One-Way Paging  
 Published: 01/01/2012  
 Effective: 02/07/2012

No. 35507 (AMD): R746-405-2. Format and Construction of Tariffs  
 Published: 01/01/2012  
 Effective: 02/07/2012

No. 35506 (REP): R746-800. Working 4 Utah Operations  
 Published: 01/01/2012  
 Effective: 02/07/2012

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 No. 35542 (NEW): R850-41. Rights of Entry  
 Published: 01/01/2012  
 Effective: 02/07/2012

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 No. 35511 (AMD): R865-19S-32. Leases and Rentals Pursuant to Utah Code Ann. Section 59-12-103  
 Published: 01/01/2012  
 Effective: 02/09/2012

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 No. 35512 (AMD): R877-23V-20. Reasonable Cause to Deny, Suspend, or Revoke a License Issued Under Title 41, Chapter 3 Pursuant to Utah Code Ann. Section 41-3-209  
 Published: 01/01/2012  
 Effective: 02/09/2012

No. 35513 (AMD): R877-23V-21. Automated License Plate Recognition System Pursuant to Utah Code Ann. Section 41-3-105  
 Published: 01/01/2012  
 Effective: 02/09/2012

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No. 35514 (AMD): R884-24P-62. Valuation of State Assessed Unitary Properties Pursuant to Utah Code Ann. Section 59-2-201  
Published: 01/01/2012  
Effective: 02/09/2012

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No. 35256 (CPR): R909-19. Safety Regulations for Tow Truck Operations - Tow Truck Requirements for Equipment, Operation and Certification  
Published: 01/01/2012  
Effective: 02/07/2012

No. 35256 (AMD): R909-19. Safety Regulations for Tow Truck Operations - Tow Truck Requirements for Equipment, Operation and Certification  
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Effective: 02/07/2012

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Published: 01/01/2012  
Effective: 02/07/2012

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No. 35516 (AMD): R930-3. Highway Noise Abatement  
Published: 01/01/2012  
Effective: 02/07/2012

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BY KEYWORD (SUBJECT)**

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The Rules Index is a cumulative index that reflects all effective changes to Utah's administrative rules. The current Index lists changes made effective from January 2, 2012 through February 15, 2012. The Rules Index is published in the Utah State Bulletin and in the annual Utah Administrative Rules Index of Changes. Nonsubstantive changes, while not published in the Bulletin, do become part of the Utah Administrative Code (Code) and are included in this Index, as well as 120-Day (Emergency) rules that do not become part of the Code. The rules are indexed by Agency (Code Number) and Keyword (Subject).

Questions regarding the index and the information it contains should be addressed to Nancy Lancaster (801-538-3218), Mike Broschinsky (801-538-3003), or Kenneth A. Hansen (801-538-3777).

A copy of the Rules Index is available for public inspection at the Division of Administrative Rules (5110 State Office Building, Salt Lake City, UT), or may be viewed online at the Division's web site (<http://www.rules.utah.gov/>).

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**ABBREVIATIONS**

AMD = Amendment	NSC = Nonsubstantive rule change
CPR = Change in proposed rule	REP = Repeal
EMR = Emergency rule (120 day)	R&R = Repeal and reenact
NEW = New rule	5YR = Five-Year Review
EXD = Expired	

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**ABBREVIATIONS**

AMD = Amendment  
 CPR = Change in proposed rule  
 EMR = Emergency rule (120 day)  
 NEW = New rule  
 EXD = Expired  
 NSC = Nonsubstantive rule change  
 REP = Repeal  
 R&R = Repeal and reenact  
 5YR = Five-Year Review

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